

**CONFIRMATION HEARINGS  
ON FEDERAL APPOINTMENTS**

Y 4. J 89/2: S. HRG. 103-  
1031/PT. 6

Confirmation Hearings on Federal Ap...

**HEARINGS**

BEFORE THE

**COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE**

**ONE HUNDRED THIRD CONGRESS**

**SECOND SESSION**

**ON**

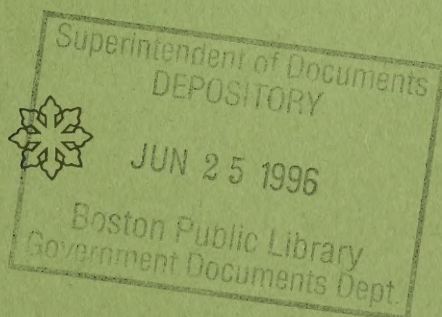
**CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY**

**SEPTEMBER 28; OCTOBER 4 AND 6, 1994**

**Part 6 of 6**

**Serial No. J-103-28**

Printed for the use of the Committee on the Judiciary







# CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

---

## HEARINGS

BEFORE THE

## COMMITTEE ON THE JUDICIARY UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

CONFIRMATIONS OF APPOINTEES TO THE FEDERAL JUDICIARY

---

SEPTEMBER 28; OCTOBER 4 AND 6, 1994

---

### Part 6 of 6

---

Serial No. J-103-28

---

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1996

23-045

## COMMITTEE ON THE JUDICIARY

JOSEPH R. BIDEN, JR., Delaware, *Chairman*

EDWARD M. KENNEDY, Massachusetts  
HOWARD M. METZENBAUM, Ohio  
DENNIS DECONCINI, Arizona  
PATRICK J. LEAHY, Vermont  
HOWELL HEFLIN, Alabama  
PAUL SIMON, Illinois  
HERBERT KOHL, Wisconsin  
DIANNE FEINSTEIN, California  
CAROL MOSELEY-BRAUN, Illinois

ORRIN G. HATCH, Utah  
STROM THURMOND, South Carolina  
ALAN K. SIMPSON, Wyoming  
CHARLES E. GRASSLEY, Iowa  
ARLEN SPECTER, Pennsylvania  
HANK BROWN, Colorado  
WILLIAM S. COHEN, Maine  
LARRY PRESSLER, South Dakota

CYNTHIA C. HOGAN, *Chief Counsel*  
CATHERINE M. RUSSELL, *Staff Director*  
MARK R. DISLER, *Minority Staff Director*  
SHARON PROST, *Minority Chief Counsel*



# CONTENTS

## HEARING DATES

Wednesday, September 28, 1994, 10:40 a.m .....	Page 1
Wednesday, September 28, 1994, 2:10 p.m .....	55
Tuesday, October 4, 1994 .....	417
Thursday, October 6, 1994 .....	645

## WEDNESDAY, SEPTEMBER 28, 1994, 10:40 A.M.

### STATEMENTS OF COMMITTEE MEMBERS

Kohl, Hon. Herbert .....	1
Cohen, Hon. William S .....	2
Prepared statement .....	3

### INTRODUCTION OF NOMINEES

Graham, Hon. Bob .....	4
Prepared statement .....	5
Mack, Hon. Connie .....	5
Dixon, Hon. Julian C .....	15
Feinstein, Hon. Dianne (prepared statement) .....	21
Mineta, Hon. Norman Y. (prepared statement) .....	22

### TESTIMONY OF NOMINEES

Sheldon C. Bilchik, Potomac, MD, to be Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice .....	7
Questioning by:	
Senator Kohl .....	8
Senator Cohen .....	12
Rose Ochi, Monterey Park, CA, to be Associate Director, Bureau of State and Local Affairs, Office of National Drug Control Policy .....	16
Questioning by:	
Senator Kohl .....	16

### ALPHABETICAL LIST AND MATERIAL SUBMITTED

Bilchik, Sheldon C.:	
Testimony .....	7
Questionnaire .....	23
Ochi, Rose:	
Testimony .....	16
Prepared statement .....	19
Questionnaire .....	38

## WEDNESDAY, SEPTEMBER 28, 1994, 2:10 P.M.

### STATEMENT OF COMMITTEE MEMBER

Leahy, Hon. Patrick J .....	55
-----------------------------	----

# IV

## INTRODUCTION OF NOMINEES

	Page
Leahy, Hon. Patrick J .....	56
Prepared statement .....	57
Jeffords, Hon. James M .....	57
Metzenbaum, Hon. Howard M .....	59
Glenn, Hon. John .....	60
Kaptur, Hon. Marcy .....	61
Wofford, Hon. Harris .....	62
Specter, Hon. Arlen .....	62
Inouye, Hon. Daniel K .....	63
Akaka, Hon. Daniel K .....	64
McCain, Hon. John .....	64
DeConcini, Hon. Dennis .....	65
Dodd, Hon. Christopher J .....	67
Lieberman, Hon. Joseph I. (prepared statement) .....	68
Nunn, Hon. Sam .....	69

## TESTIMONY OF NOMINEES

Fred I. Parker, Burlington, VT, to be U.S. Circuit Judge for the Second Circuit .....	71
Questioning by:	
Senator Leahy .....	72
Senator Pressler .....	74
Helen W. Gillmor, Honolulu, HI, to be U.S. District Judge for the District of Hawaii .....	77
Questioning by:	
Senator Leahy .....	77
Senator Pressler .....	92
David A. Katz, Toledo, OH, to be U.S. District Judge for the Northern District of Ohio .....	79
Questioning by:	
Senator Leahy .....	78
Senator Pressler .....	91
Sean J. McLaughlin, Erie, PA, to be U.S. District Judge for the Western District of Pennsylvania .....	80
Questioning by:	
Senator Leahy .....	80
Senator Pressler .....	90
William T. Moore, Jr., Savannah, GA, to be U.S. District Judge for the Southern District of Georgia .....	82
Questioning by:	
Senator Leahy .....	82
Senator Pressler .....	89
Roslyn Silver, Phoenix, AZ, to be U.S. District Judge for the District of Arizona .....	84
Questioning by:	
Senator Leahy .....	84
Senator Pressler .....	89
Alvin W. Thompson, Windsor, CT, to be U.S. District Judge for the District of Connecticut .....	87
Questioning by:	
Senator Leahy .....	86
Senator Pressler .....	88

## WITNESSES

Testimony of William E. Willis, Chair, and Charles English, sixth circuit representative, American Bar Association, Standing Committee on Federal Judiciary .....	95
Questioning by:	
Senator Leahy .....	95



# V

## ALPHABETICAL LIST AND MATERIAL SUBMITTED

	Page
Biden, Hon. Joseph R., Jr.:	
Letter from Keteles Alexander, NBA, Washington, DC, regarding nomination of Alvin W. Thompson to the U.S. District Court of the District of Connecticut, Sept. 30, 1994 .....	406
Appendix: Judicial Selection Evaluation Guidelines .....	414
English, Charles E.:	
Testimony .....	95
Prepared statement .....	98
Gillmor, Helen W.:	
Testimony .....	77
Questionnaire .....	146
Katz, David A.:	
Testimony .....	79
Questionnaire .....	202
Responses to questions submitted by Senator Pressler .....	235
McLaughlin, Sean J.:	
Testimony .....	80
Questionnaire .....	237
Responses to questions submitted by Senator Pressler .....	273
Moore, William T., Jr.:	
Testimony .....	82
Questionnaire .....	275
Responses to questions submitted by Senator Pressler .....	310
Parker, Fred I.:	
Testimony .....	71
Questionnaire .....	100
Silver, Roslyn:	
Testimony .....	84
Questionnaire .....	314
Responses to questions submitted by Senator Pressler .....	359
Thompson, Alvin W.:	
Testimony .....	87
Questionnaire .....	364
Responses to questions submitted by Senator Pressler .....	401
Willis, William E.:	
Testimony .....	95
Prepared statement .....	97

TUESDAY, OCTOBER 4, 1994

### STATEMENT OF COMMITTEE MEMBER

Simon, Hon. Paul .....	417
------------------------	-----

### INTRODUCTION OF NOMINEES

Durenberger, Hon. Dave .....	417
Wellstone, Hon. Paul D .....	419
Boren, Hon. David L .....	420
Chafee, Hon. John H .....	423
Lautenberg, Hon. Frank R .....	423
Prepared statement .....	425
Bradley, Hon. Bill (prepared statement) .....	426
Simon, Hon. Paul .....	426
Moseley-Braun, Hon. Carol .....	426
Prepared statement .....	430

### TESTIMONY OF NOMINEES

Diana E. Murphy, Minneapolis, MN, to be U.S. Circuit Judge for the Eighth Circuit .....	432
Questioning by:	
Senator Simon .....	432
Sven E. Holmes, Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma .....	433

## VI

Sven E. Holmes, Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma—Continued	Page
Questioning by:	
Senator Simon .....	433
Vicki Miles-LaGrange, Oklahoma City, OK, to be U.S. District Judge for the Western District of Oklahoma .....	435
Questioning by:	
Senator Simon .....	435
William H. Walls, Newark, NJ, to be U.S. District Judge for the District of New Jersey .....	436
Questioning by:	
Senator Simon .....	436
Elaine E. Bucklo, Chicago, IL, to be U.S. District Judge for the Northern District of Illinois .....	438
Questioning by:	
Senator Simon .....	438
Robert W. Gettleman, Evanston, IL, to be U.S. District Judge for the Northern District of Illinois .....	440
Questioning by:	
Senator Simon .....	440

### ALPHABETICAL LIST AND MATERIAL SUBMITTED

Bucklo, Elaine E.:	
Testimony .....	438
Questionnaire .....	586
Gettleman, Robert W.:	
Testimony .....	440
Questionnaire .....	612
Holmes, Sven E.:	
Testimony .....	433
Questionnaire .....	488
Miles-LaGrange, Vicki:	
Testimony .....	435
Questionnaire .....	519
Murphy, Diana E.:	
Testimony .....	432
Questionnaire .....	442
Walls, William H.:	
Testimony .....	436
Questionnaire .....	567

THURSDAY, OCTOBER 6, 1994

### STATEMENTS OF COMMITTEE MEMBERS

Metzenbaum, Hon. Howard M .....	645
Hatch, Hon. Orrin G .....	655

### INTRODUCTION OF NOMINEES

Glenn, Hon. John .....	645
Metzenbaum, Hon. Howard M .....	646
Prepared statement .....	647
Ford, Hon. Wendell H .....	648
McConnell, Hon. Mitch .....	649
Prepared statement .....	649
Hutchison, Hon. Kay Bailey .....	652
Breaux, Hon. John B .....	652
Jefferson, Hon. William J .....	654
Prepared statement .....	655
Johnston, Hon. J. Bennett (prepared statement) .....	656
Norton, Hon. Eleanor Holmes .....	661
Helms, Hon. Jesse (prepared statement) .....	668
Livingston, Hon. Bob .....	671



## VII

### TESTIMONY OF NOMINEES

	Page
Thomas B. Russell, Paducah, KY, to be U.S. District Judge for the Western District of Kentucky .....	650
Questioning by:	
Senator Metzenbaum .....	650
Okla Jones II, New Orleans, LA, to be U.S. District Judge for the Eastern District of Louisiana .....	657
Questioning by:	
Senator Metzenbaum .....	657
Senator Hatch .....	658
G. Thomas Porteous, Jr., Metairie, LA, to be U.S. District Judge for the Eastern District of Louisiana .....	659
Questioning by:	
Senator Metzenbaum .....	659
Senator Hatch .....	660
James Robertson, Rockville, MD, to be U.S. District Judge for the District of Columbia .....	662
Questioning by:	
Senator Metzenbaum .....	662
Senator Hatch .....	664
Kathleen M. O'Malley, Upper Arlington, OH, to be U.S. District Judge for the Northern District of Ohio .....	662
Questioning by:	
Senator Metzenbaum .....	665
Senator Hatch .....	667
James A. Beaty, Jr., Winston-Salem, NC, to be U.S. District Judge for the Middle District of North Carolina .....	668
Questioning by:	
Senator Metzenbaum .....	669
David Briones, El Paso, TX, to be U.S. District Judge for the Western District of Texas .....	669
Questioning by:	
Senator Metzenbaum .....	670

### ALPHABETICAL LIST AND MATERIAL SUBMITTED

Beaty, James A., Jr.:	
Testimony .....	668
Questionnaire .....	869
Briones, David:	
Testimony .....	669
Questionnaire .....	917
Jones, Okla, II:	
Testimony .....	657
Questionnaire .....	705
O'Malley, Kathleen M.:	
Testimony .....	665
Questionnaire .....	834
Porteous, G. Thomas, Jr.:	
Testimony .....	659
Questionnaire .....	756
Robertson, James:	
Testimony .....	662
Letter to Joseph R. Biden, Jr., Committee on the Judiciary, U.S. Senate, Washington, DC, Oct. 6, 1994 .....	665
Questionnaire .....	795
Russell, Thomas, B.:	
Testimony .....	650
Questionnaire .....	672

### ALPHABETICAL LIST OF NOMINEES FOR FEDERAL APPOINTMENTS

Beaty, James A., Jr., Winston-Salem, NC, to be U.S. District Judge for the Middle District of North Carolina .....	668
Bilchik, Sheldon C., Potomac, MD, to be Administrator, Office of Juvenile Justice and Delinquency Prevention, Department of Justice .....	7

## VIII

Briones, David, El Paso, TX, to be U.S. District Judge for the Western District of Texas .....	Page 669
Bucklo, Elaine E., Chicago, IL, to be U.S. District Judge for the Northern District of Illinois .....	438
Gettleman, Robert W., Evanston, IL, to be U.S. District Judge for the Northern District of Illinois .....	440
Gillmor, Helen W., Honolulu, HI, to be U.S. District Judge for the District of Hawaii .....	77
Holmes, Sven E., Washington, DC, to be U.S. District Judge for the Northern District of Oklahoma .....	433
Jones, Okla, II, New Orleans, LA, to be U.S. District Judge for the Eastern District of Louisiana .....	657
Katz, David A., Toledo, OH, to be U.S. District Judge for the Northern District of Ohio .....	79
McLaughlin, Sean J., Erie, PA, to be U.S. District Judge for the Western District of Pennsylvania .....	80
Miles-LaGrange, Vicki, Oklahoma City, OK, to be U.S. District Judge for the Western District of Oklahoma .....	435
Moore, William T., Jr., Savannah, GA, to be U.S. District Judge for the Southern District of Georgia .....	82
Murphy, Diana E., Minneapolis, MN, to be U.S. Circuit Judge for the Eighth Circuit .....	432
O'Malley, Kathleen M., Upper Arlington, OH, to be U.S. District Judge for the Northern District of Ohio .....	662
Ochi, Rose, Monterey Park, CA, to be Associate Director, Bureau of State and Local Affairs, Office of National Drug Control Policy .....	16
Parker, Fred I., Burlington, VT, to be U.S. Circuit Judge for the Second Circuit .....	71
Porteous, G. Thomas, Jr., Metairie, LA, to be U.S. District Judge for the Eastern District of Louisiana .....	659
Robertson, James, Rockville, MD, to be U.S. District Judge for the District of Columbia .....	662
Russell, Thomas B., Paducah, KY, to be U.S. District Judge for the Western District of Kentucky .....	650
Silver, Roslyn, Phoenix, AZ, to be U.S. District Judge for the District of Arizona .....	84
Thompson, Alvin W., Windsor, CT, to be U.S. District Judge for the District of Connecticut .....	87
Walls, William H., Newark, NJ, to be U.S. District Judge for the District of New Jersey .....	436



**NOMINATIONS OF SHELDON C. BILCHIK, TO  
BE ADMINISTRATOR, OFFICE OF JUVENILE  
JUSTICE AND DELINQUENCY PREVENTION,  
DEPARTMENT OF JUSTICE; AND ROSE  
OCHI, TO BE ASSOCIATE DIRECTOR, BU-  
REAU OF STATE AND LOCAL AFFAIRS, OF-  
FICE OF NATIONAL DRUG CONTROL POLICY**

---

**WEDNESDAY, SEPTEMBER 28, 1994**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The committee met, pursuant to notice, at 10:40 a.m., in room SH-216, Hart Senate Office Building, Hon. Herbert H. Kohl presiding.

Also present: Senator Cohen.

**OPENING STATEMENT OF SENATOR KOHL**

Senator KOHL. Good morning. This hearing will come to order. Today the Judiciary Committee will conduct a hearing on Shay Bilchik to be Administrator of the Office of Juvenile Justice and Delinquency Prevention, and Rose Ochi to be the Associate Director, Bureau of State and Local Affairs of the Office of National Drug Control Policy.

Before we begin I would like to emphasize the significance of this morning's proceedings. If confirmed, both Mr. Bilchik and Ms. Ochi will bear significant responsibility for one of the core responsibilities of the Federal Government, mainly ensuring our safety. The only way to ensure that safety is to deal with the problems that result from, as well as contribute to, both juvenile crime and also drug use. As chairman of the Juvenile Justice Subcommittee, I am particularly interested in hearing Mr. Bilchik's views about how to reduce the scourge of juvenile crime because the sad truth is that too many of our children are bringing guns to school and committing armed robbery, assault, and other deadly offenses.

Indeed, the number of children arrested for murder has more than doubled in the past 10 years from 1,250 in 1983 to more than 2,600 in 1992. This is especially troubling because our children really are our future and right now that future looks itself to be very troubled. In short, the juvenile justice system is broken and it needs to be fixed.

The juvenile corrections system is especially in need of repair. The majority of juvenile detention facilities nationwide are vastly

overcrowded and understaffed. Juvenile offenders attacked detention facility staff 8,000 times across our country last year and recidivism rates for juveniles who have been incarcerated are unbelievably high.

And so we will not solve the juvenile crime problem in this country unless we focus on improving the juvenile correction system. A commitment of this sort must be made at all levels of government, Federal, State, and local. That is why I am introducing today the Juvenile Corrections Act of 1994 which would guarantee that 10 percent of the prison funding in the crime bill is used for the construction and operation of secure juvenile facilities.

This was unfortunately dropped from the crime conference at the 11th hour. We are pleased that the administration has acted to fill both of the positions that are under consideration today, and we look forward to hearing about their respective views on these critical issues. Before we move on to listening to Senators and Representatives here to introduce other members, I would like to call on my colleague, Bill Cohen.

#### OPENING STATEMENT OF SENATOR COHEN

Senator COHEN. Thank you very much, Mr. Chairman. I will try and be brief because I think you touched upon most of the issues that I wanted to mention in my opening statement, and I will just submit it for the record. I think the problem that we are looking at is that violent crimes are being committed by people who are younger and younger, and the crimes themselves are extraordinarily more violent at that age. I think it is a staggering phenomenon that is taking place.

I was chilled by that story of the Chicago youth, Robert "Yummy" Sandifer, who at the age of 11 had killed a young girl, and wounded another young boy by spraying a crowd with a semiautomatic weapon. Then a few days later he was shot in the head to be silenced by gang members for fear that he was drawing too much attention to their activities.

I think it is unfortunate, but he matches a profile which is all too prevalent today. He was born to a teenage mother who was addicted to crack. His father is now in jail. He was beaten and burned as a baby to the point where the social agencies had to remove him from the custody of his mother, and he averaged one felony per month over the last 18 months of his life, 23 felonies, 5 misdemeanors in total. There was one Cook County policeman who said what you have here is a kid who was made into a sociopath by the time he was 3 years old.

We are seeing this situation replicated on an extraordinary basis. This increasing trend of younger and younger people committing more and more violent crimes seems to me to present this country with a staggering challenge. And it is not only a question of locking them up. Mr. Bilchik and I have had at least a brief opportunity to discuss this. We have got to find ways to intervene at a very early age in order to prevent people like Yummy from heading inexorably toward a life of violent crime.

I must say I have been disappointed, Mr. Chairman, that the President has waited so long to come forward with this appointment. I think it is an excellent appointment, but we have been call-

ing for this appointment for some time now. Mr. John Wilson who has done an outstanding job in the interim, and I want to take this opportunity to commend him for the work that he has done.

But, again, this is a serious problem we have not fully addressed yet, and I want to commend Senator Kohl for his leadership and I look forward to working with him in the coming year.

[Prepared statement of Senator Cohen follows:]

#### PREPARED STATEMENT OF SENATOR WILLIAM S. COHEN

Mr. Bilchik, as you are well aware, violent crime among our juvenile population has become one of our most pressing national problems. Children coming out of broken homes and living in neighborhoods riddled with crime are becoming hardened felons at younger and younger ages. Gangs that dominate many of these neighborhoods recruit even the youngest of children to sell drugs, steal cars, and even commit murder. Our juvenile courts are overwhelmed by not only the burgeoning number of cases, but the severity of the behavioral and emotional problems facing juveniles that enter the system. Mr. Bilchik, if confirmed, as I expect you will be, you face a daunting task.

Studies show that the problem of juvenile crime has worsened since federal intervention began with the enactment of the Juvenile Justice and Delinquency Prevention Act of 1974. In the ten-year period between 1982 and 1991, the juvenile arrest rate for violent offenses almost doubled. The number of homicides by children 10 to 14 years-old has increased by 50 percent. Where a majority of cases in New York City's family courts were misdemeanors eight years ago, today more than 90 percent are felonies.

Like the rest of the nation, I was chilled by the story of the Chicago youth, Robert "Yummy" Sandifer, who at age 11 killed a young girl and wounded a young boy when he sprayed semiautomatic gun fire into a crowd of children playing football. Three days later he was shot in the head by fellow gang members after threatening to turn himself in to the police.

Unfortunately, Yummy Sandifer matches the profile of so many of today's troubled youths. He was born to a teenage mother addicted to crack and a father who is now in jail. Yummy was beaten and burned as a baby and eventually was removed from his mother's custody due to her abuse and neglect. He averaged one felony per month over the last 18 months of his life; 23 felonies and 5 misdemeanors in total. As one Cook County public guardian said, "what you have here is a kid who was made into a sociopath by the time he was three years old."

The trend of increasing violent behavior by young people presents many challenges to the juvenile justice system. It is necessary to develop strategies for intervening at an early stage so youth with troubled backgrounds do not develop into career criminals. It is equally important, however, that the juvenile justice system provide meaningful opportunities for rehabilitation so these children have a second chance to make something of their lives.

As the leading federal agency responsible for juvenile crime prevention programs, the OJJDP has a critical role in addressing these issues. That is why I have been disappointed that President Clinton allowed the position of Administrator to remain vacant for almost two years. Although Acting Administrator John Wilson deserves credit for shepherding the OJJDP through this period, a permanent appointment should have been made long ago.

I'm sure that the Chairman joins me in commending John Wilson for his service. We thank him for his efforts and contribution to the Office.

Mr. Bilchik, I look forward to hearing your views on how the federal government should respond to the rising tide of juvenile crime and the agenda you intend to set for OJJDP in the coming years.

Senator KOHL. Thank you very much, Senator Cohen. As is customary, we will now hear from Senators and their representatives who wish to introduce nominees to the committee, but before we turn to them, I state for the record that each nominee has completed a detailed questionnaire on his or her qualifications, experience, finances, and philosophy. The portions of the questionnaire available to the public will be printed in the record of this hearing. We will also keep the record open for a limited time in case members of the committee would like to submit written questions, and,



of course, we will place in the record the full introductory statements of home-State Senators.

We have with us this morning Senators Graham and Mack who wish to say a word about nominee Bilchik. Senator Graham.

**STATEMENT OF HON. BOB GRAHAM, A U.S. SENATOR FROM  
THE STATE OF FLORIDA**

Senator GRAHAM. Thank you very much, Mr. Chairman. I appreciate the opportunity to join my colleague Senator Mack in introducing Shay Bilchik to this committee. I heard the use of the word singular in what we were to say, and I will take that as a signal for brevity. I have a longer statement which I would like to request to be entered in the record.

Senator KOHL. It will be done.

Senator GRAHAM. I will say two things. First, that Mr. Bilchik brings to this nomination a distinguished and lengthy career in Florida law enforcement. For over 15 years he has served with distinction, intelligence, and compassion in one of the most challenging law enforcement assignments in our State as the chief deputy in our largest judicial circuit with particular responsibility for the administration of the juvenile justice program. In that position, he worked very closely with our current attorney general. In my prepared remarks, there will be further detail about that.

Second, I would like to talk about a particular program that Mr. Bilchik was very involved in creating and in implementing, and I do so because it is a program in which now the Federal Government is becoming involved, and I am using this as an opportunity to make you aware of that program. Mr. Bilchik has helped to develop a number of innovative juvenile justice programs. One of those is called the Florida Environmental Institute.

In this program, public and private lands have been used for constructive discipline juvenile justice programs for the most serious and chronic offenders. In addition to developing the program, Mr. Bilchik was also responsible for screening the youth who would actually participate in the program. This institute which has been under way in Florida for better than a decade has since become a national model for juvenile delinquency prevention and treatment and is being replicated on the Federal level in a program called Youth Environmental Services or the YES program.

This wilderness program provides the public with security from serious delinquent violent teenagers for whom constructive discipline and a challenging environment are proven effective correctional tools. Currently, there are programs initiated in approximately six locations in Federal lands such as wilderness areas and it is hoped that this program will expand and eventually be available in all States and be able to serve a significant population of serious chronic juvenile delinquents.

Mr. Bilchik will bring to this program as well as to others in which he will be involved a depth of personal hands-on experience. In these various roles, I have been impressed with Shay's interest in solving children's problems and becoming involved early, but also his willingness to be tough on chronic offenders. He has experienced juvenile justice and delinquency prevention from both sides and at all levels, as a prosecutor, grassroots developer of effective

programs, and provider of administrative oversight. His unique experience will make him a superb addition to the Office of Juvenile Justice and Delinquency Prevention. I urge the committee to confirm his nomination and look forward to working with you and him in his challenging future responsibilities.

Senator KOHL. Thank you very much, Senator Graham.

[The prepared statement of Senator Graham follows:]

#### PREPARED STATEMENT OF SENATOR BOB GRAHAM

Mr. Chairman, I am delighted to be here today to introduce Mr. Shay Bilchik as the nominee for Administrator of the Office of Juvenile Justice and Delinquency Prevention.

Before coming to Washington, Mr. Bilchik served in the State of Florida law enforcement community for over 15 years, and during that time, I have been impressed by his intelligence, compassion, and commitment to addressing the issues of juvenile delinquency and prevention.

Mr. Bilchik has had a long and distinguished record in juvenile justice in the State of Florida. After graduating from the University of Florida Law School, he began his career in 1977 as an Assistant State Attorney in the Office of the State Attorney of the 11th Judicial Circuit of Florida in Miami, one of the largest trial court systems in the nation, where he remained for 16 years.

During his career with the State Attorney's Office, he was promoted to Chief Assistant for Administration of the Juvenile and Felony Division. In this position, he had direct supervisory responsibility over the Juvenile Division Chief and the Director of the Child Advocacy Center, and monitored all cases of juveniles transferred to the criminal court for prosecution as adults.

He also participated on the faculty of the National Council of Juvenile and Family Court Judges, as a lecturer in its national conference programs. He is well-known and highly respected as both a speaker and a teacher, in the State of Florida and across the nation.

In Florida, he has helped to develop a number of innovative juvenile justice programs, most notably the Florida Environmental Institute, in which public lands are used for constructive, disciplined juvenile delinquency programs for serious, chronic offenders. In addition to developing the programs, Shay was also responsible for screening the youth participants.

The Institute has since become a national model for juvenile delinquency prevention and treatment, and is being replicated on a federal level in the Youth Environmental Services (YES) program. Such wilderness programs provide the public with security from seriously delinquent, violent teenagers for whom constructive discipline and a challenging environment are proven, effective correctional tools.

Shay is presently serving as an Associate Deputy Attorney General in the Office of the Deputy Attorney General. In this position, he is involved in working on issues and programs relating to youth violence and delinquency, child abuse and neglect, and comprehensive crime prevention and early intervention planning.

I have been impressed by Shay's interest in solving kids' problems and getting involved early, but also his willingness to be tough on chronic offenders. He has experienced juvenile justice and delinquency prevention from both sides and at all levels, both as a prosecutor and as an administrator, from grassroots development to administrative oversight. His unique experience will make him a superb addition to the Office of Juvenile Justice and Delinquency Prevention. I urge the Committee to confirm his nomination and look forward to working with him in the future.

Senator KOHL. Senator Mack.

#### STATEMENT OF HON. CONNIE MACK, A U.S. SENATOR FROM THE STATE OF FLORIDA

Senator MACK. Mr. Chairman, I am pleased to be here today to introduce Shay Bilchik for confirmation to the position of Administrator of the Office of Juvenile Justice and Delinquency Prevention. It is a particular honor given that he is a fellow Floridian and a well-qualified nominee. I hope the committee will vote to confirm him to this position. The prevention of juvenile crime and child

abuse cannot wait. The violence that plagues our Nation keeps moving further and further down the age spectrum.

It is no longer shocking to hear of a 15-year-old as the suspect in a brutal murder. It is no longer unusual to hear that children carry guns to school everyday. The sooner we confirm Mr. Bilchik, the sooner he can begin working on the problem. Since my good friend from Florida, Senator Graham, has already told you about Mr. Bilchik's impressive education and professional background, I would prefer to just say a few words about his point of view and how that qualifies him for the job.

The very title of the position he is nominated for makes clear that whoever occupies the seat as Administrator must have both an understanding of how to prosecute juvenile crime as well as how to prevent it. I believe Shay Bilchik is superbly qualified to carry out those duties. His approach to the problem of juvenile crime is balanced. He is capable of being tough when punishment is warranted and compassionate when it is not. He supports the Weed and Seed Program and is a strong advocate for the prevention of child abuse. He knows that we must offer early assistance to at-risk children and their parents if we are going to break the cycle of child abuse and juvenile crime.

But he also knows that law-abiding citizens have a right to insist upon personal responsibility and an understanding of the difference between right and wrong regardless of the age of the offender. Again, I thank the committee for the opportunity to present Mr. Bilchik. The Department of Justice needs him, and I urge you to vote him out favorably as soon as possible.

Senator KOHL. Thank you, Senator Mack.

Senator GRAHAM. Mr. Chairman, if I could——

Senator KOHL. Yes, Senator Graham.

Senator GRAHAM. Mr. Bilchik is accompanied today by his wife, children, and brother, and I wonder if I could ask his family to stand and be recognized?

Senator KOHL. Yes, we would like very much for you to stand, Mrs. Bilchik, and kids, and his brother. Delighted to have you all here.

Senator GRAHAM. I apologize. It is a cousin rather than brother.

Senator KOHL. All right. Very good.

Senator GRAHAM. But like a brother.

Senator KOHL. So we thank you Senator Graham and Senator Mack. We appreciate your coming here today.

We will start now with Mr. Shay Bilchik who has been nominated to be Administrator of the Office of Juvenile Justice and Delinquency Prevention. Mr. Bilchik, if you would raise your right hand and state—would you stand, please? Do you swear that the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. BILCHIK. I do.

Senator KOHL. Thank you, Mr. Bilchik.



**TESTIMONY OF SHELDON C. BILCHIK, POTOMAC, MD, TO BE  
ADMINISTRATOR, OFFICE OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION, DEPARTMENT OF JUSTICE**

Senator KOHL. Mr. Bilchik, due to the unprecedented need to combat juvenile crime, we consider the OJJDP's administrator's job to be one of the most important jobs in the Justice Department, and we would be happy to have you take a moment or two right now to tell us why you want this job and what you see the dimensions of this job are in light of the problems that we have in this country with juveniles. Go right ahead.

Mr. BILCHIK. Thank you, Mr. Chairman, Senator Cohen. I am honored to be here today to be the nominee for this office. I have spent the last 16½ years of my professional career committed to juvenile justice issues. I agree with you that this is one of the most important positions in the Department of Justice. We are faced right now with an unparalleled crisis in relation to juvenile crime. As recently, although I have not read the article in today's USA Today, they have highlighted again the increase in juvenile crime, the occurrences of juvenile crime with younger and younger offenders.

I think that the Office of Juvenile Justice and Delinquency Prevention has the opportunity to fully engage jurisdictions across the country in fighting that epidemic. If we effectively link with those jurisdictions, share the information we have about what appears to be working, what production of evaluation and research has demonstrated to be working in relation to violence prevention, I think we can make a dent in relation to that crime. This requires a very comprehensive effort. It requires an effort along the entire continuum of the life of the child. It just does not deal with the deep end of the system where we are talking about safety and immediate safety of the community, but also gets into what we do very early in the child's life.

Senator Cohen, when you mentioned about the 11-year-old's life history, we see that so often in relation to the abuse of a child and the eventual delinquency of that child and victimization. So when we look at the continuum of life, the continuum of care that we need to create, we need to look at every part of a child's life where we lose them to violence either as victims or eventually as perpetrators, and then make a concerted effort in each one of those stages to have an impact, whether it be effective prenatal care, home visitation for at-risk newborns, Head Start programming, truancy prevention, early intervention and diversion programs for new offenders with minor offenses or graduated sanctions for those offenders that do come back, and then eventually incarceration if that need be the case.

We need to make sure that we provide services along that entire continuum. I think the Office of Juvenile Justice and Delinquency Prevention can share information with jurisdictions around the country how to, one, spend their own resources perhaps most effectively, doing things a little differently, a different perspective on how we do things; and, two, make sure we take the Federal resources that go into those jurisdictions and the new Federal resources in the crime act, and use those resources in the wisest way

possible to join together with those communities in developing new programs that have a chance to work.

So I see that as a pivotal role of the office and one that we need to develop and refine as we go through the next couple of years. I look at my history, my professional history, in starting out as an entry level traffic prosecutor and then eventually as a juvenile court prosecutor and then into the adult system. I found myself at a pivotal point in my career where I had to assess what do I want to do at this point, continue in the criminal prosecution of adults, leave the office, or do something else.

What came to me was that the most important thing I had done in the office was to work with juveniles, that if we had a chance to succeed at rehabilitation, the best chance we had was with our youth, and the important part of that was it impacted the future of the community I was in and of our country as a whole. I think I bring to the position the perspective of a practitioner, someone who has been in the local community dealing with these issues in the court setting. I have the administrative experience of having been a chief assistant to Ms. Reno and the perspective of a prosecutor as well, that there needs to be a balance here between effective interventions and prevention but also the immediate safety of the community when we face a juvenile offender.

#### QUESTIONING BY SENATOR KOHL

Senator KOHL. All right. Mr. Bilchik, in your opinion, what has happened in our society to create this unprecedented problem with juveniles?

Mr. BILCHIK. I think that some of the things that we see happening are, one, a deterioration of the sense of community that our youth are involved with, that the support systems, whether it be the immediate family support system, whether it be the messages they receive from peer groups, the opportunities they have for recreation in their communities, that has changed dramatically over the last 20 years. They get conflicting messages. Sometimes they get very good messages and probably in the vast majority of cases, good messages from their parents about the kind of life they should lead, the values they should adopt, but they are getting conflicting messages from an increasing number of youth in the community that are saying different things because they do not hear that message in their home, and there is that conflict as they hit the door and leave their house as to what they should do, how they should conduct themselves. Do they maintain the message they hear from their parents in a very positive way or do they, are they impacted by the peer pressure, the experience on the street?

I think one of the things we can do to offset that is to make sure that we enhance those support mechanisms that exist in communities through mentoring programs, through conflict resolution programs, through parent training programs, to keep sending the positive messages and to surround our youth with that environment that will lead them away from violence rather than to gangs and violence.

Senator KOHL. So are you a strong proponent of early intervention, trying to see that the problems do not occur in the first place?

Just as strong a proponent of that approach as the approach that requires the need to incarcerate?

Mr. BILCHIK. I think that they need to be balanced and they should be equally important in a jurisdiction in trying to solve this problem.

Senator KOHL. Do you agree that young people today are subject to more negative pressure, negative influence, negative peer kinds of activities than ever before in our country?

Mr. BILCHIK. I agree. I think that they are. I think that the messages they are getting are increasingly negative. I think the things that they are exposed to, whether it be through guns, whether it be gangs, drugs, are things that while children may have seen them and faced them, and maybe it was different, maybe instead of as many drugs it was more alcohol, and there was always a gang environment even 20 years ago, but not to the extent that they see it now, not translated to whether they need to participate and play the game to survive, and that is what has really dramatically changed.

Senator KOHL. Is it not true that the kids today are born the same as they were born 20 or 40 or 50 years ago, but when they get to be 10 or 15, they just, in so many cases, turn out differently, and that is almost entirely attributable to the environment in which that they grow up? Are there any other factors?

Mr. BILCHIK. I think that that is the tragedy for some of our youth—as I have heard Mrs. Clinton frame it—that you can see in some youth a sparkle in their eye, and then as you see those children later in the system, you see that it is dulled, that it is not there. Every one of those children has the opportunity for growth, for a happy life, and the tragedy is that we do not make a stronger commitment to give them the environment where they can succeed in that path.

Senator KOHL. I would ask your opinion on this. I do not offer an opinion. We are interested in your opinions. Would you say that if the environment has changed and that they are subject to so many more pressures, and then as a result so many kids turn out to be problems in our society, then the responsibility for doing something about that, given the fact that we have changed the environment, the responsibility is ours to try and do something constructive about it?

Mr. BILCHIK. I think it is a joint responsibility. I think there are certain external things that we can do, but at the same time there is great responsibility within the family unit to send a consistent message within the home for parents to be involved with their children, for parents to send messages of how important it is, of how they conduct themselves, the values they adopt, the educational goals that they should achieve, consistent messages and participation, not arms' length participation, sitting down with your child and doing homework, helping them, going in and attending school functions, sending messages that you are important and this path that we are encouraging you to take is important and it should not be just important to you but it is to us as well. So I think it is a combination of both, Senator.

Senator KOHL. I agree with you. Mr. Bilchik, as you know, the crime bill originally contained a program that would fund the con-



struction and operation of juvenile detention facilities. Unfortunately, this provision was eliminated at the last minute by Senate and House negotiators. As a result, while the crime bill contains \$8 billion for prisons, there is not a single penny that is dedicated to secure juvenile facilities. In light of the fact that juvenile crime is at the very heart of our crime problem nationwide, and in light of the sorry state of our Nation's juvenile correction system, I was surprised and disturbed to see the juvenile detention component eliminated.

Two questions. First of all, I believe it was the intention of many crime bill conferees that the general prison program in the crime bill could, in fact, be used to fund juvenile facilities as well. Members of this committee believed that such leeway can be found in the very broad wording of the prison language. Would you agree to take a close look at this issue so that we can do whatever is necessary to ensure that the crime bill prison funds will be spent on juvenile corrections?

Mr. BILCHIK. Senator, I am already looking at that, and there is a working group within the Department of Justice that I will participate in, and that is one of the things that we are focusing on is the broad language that exists within that provision, the fact that there is nothing in there that expressly prevents the construction of juvenile facilities with those moneys to determine how best to implement that program in light of that fact.

Senator KOHL. All right. And in connection with that, as I said earlier, I am introducing legislation today to establish Federal funding for State and local juvenile facilities to fund this program. I am proposing to reallocate 10 percent of the crime bill's general prison funds, which is about \$770 million, and will you agree to take a close look at this legislation with me, and if there is any question about whether or not we can use funds in the general crime bill, if there is any question about it, would you support that legislation?

Mr. BILCHIK. I would be glad to work with you on it, Senator. I think that it is critically important that when we build these facilities or convert existing facilities for use for juveniles or for adults, that it is important that we provide a continuum, that it is not just creating a situation where juvenile offenders must be transferred into the adult system in order to have a place to go. We need to make sure we have appropriate facilities at every level of intervention, and that includes some secure juvenile facilities as well. I know that recently I read a statistic that in the State of Florida that there were over 600 youth statewide waiting to be placed in facilities that had no place to go, and they were sent home.

Senator KOHL. All right. Mr. Bilchik, many States, including Wisconsin, are looking at revising their juvenile justice codes. The reason is that these codes were enacted at a time when crime and delinquency was of a less serious and a less deadly nature than it is today. Now they believe that State laws regarding juvenile crime should change to focus not only on the best interest of the child but also on the safety of the community. Do you believe that States should revise their juvenile justice codes to reflect the changed na-

ture of juvenile violence? When we reauthorize the Juvenile Justice Act next year what kinds of things would you like to see?

Mr. BILCHIK. I think that many States have already revised their codes and built in flexibility for transfer of juveniles to criminal courts, for enhanced punishment for juvenile offenders, extended jurisdiction for juvenile offenders for more serious offenses. I think those are all steps that need to be taken in some instances to allow us the flexibility within which to work for each individual offender. So I would not advocate, for example, an absolute rule that a particular category of offense must be treated as an adult offender.

I have heard said every armed robber should go into the criminal court. Well, there are different forms of armed robbery, and there are different levels of participation in armed robbery. So the first offender who is the get-away driver in an armed robbery who is 14 years old perhaps can be rehabilitated, but the recidivist offender, the person who actually assaults someone with a gun in an armed robbery, is a different type of offender. So what I am looking for, I think, is working with the States to create statutes that provide flexibility so that prosecutorial and judicial judgments can be made that when you have a serious offender who requires incapacitation for perhaps a very long period of time, that that avenue exists, that that should not be closed out.

So I think one of the things, and we have already started, and John Wilson and I have had a very positive working relationship over the past year that I have been in Justice, to look at all the different State statutes, what the mechanisms for transfer are, what the statutory provisions are for sharing of information, for confidentiality, for retention of records, all of these things that play a role in what to do with the juvenile. Some decisions are driven by the fact that if you have a 17-year-old who commits an offense that you are worried if you kept him in the juvenile system, the record may be expunged a year later or 2 years later. So we need to look at that and create a model that we can share with different States about the best way of handling those situations.

Senator KOHL. All right. Mr. Bilchik, when Congress passed the Juvenile Justice Act years ago, it sought to ensure that recipients of Federal funds did not incarcerate juveniles together with adults. This policy made sense for a whole range of obvious reasons. However, as you know, the department's interpretation of this policy has been the subject of continuing controversy for years, especially in rural jurisdictions, and over the summer OJJDP took steps that would potentially exacerbate this controversy.

OJJDP proposed regulations that would terminate at the end of 1994 its policy of allowing States to build collocated juvenile and adult correctional facilities. While I recognize the need for separation of adults and juveniles, I am concerned about the latest proposed change in department policy and about its effect on financially strapped rural jurisdictions in Wisconsin and throughout the country. Mr. Bilchik, what is your view of OJJDP's proposal to eliminate its long-standing policy of allowing States to construct and maintain collocated facilities under certain circumstances?

Mr. BILCHIK. Mr. Wilson and I have already had initial discussions about this, and I understand that the regulation is out for comment, and we have received, I believe, over 30 comments on the

regulation. My intention is to work with John and look at the comments. My goal would be to make sure that the mandates that are there within the Juvenile Justice Act are met, that we have the separation of juvenile and adult offenders, that the goal of those mandates are met, which I believe is the emotional and physical safety of these children, but at the same time not get into a position where we are asking jurisdictions to be unduly burdened by these regulations.

So, Senator, I cannot give you an exact answer because we are really in the process of evaluating the comments, taking another look at the regulation, and then we will make decisions as to what those regulations will look like. I commit to you that we will involve you in those discussions and take a look at the comments and then make final decisions.

Senator KOHL. Thank you very much. Senator Cohen.

#### QUESTIONING BY SENATOR COHEN

Senator COHEN. Thank you, Mr. Chairman. Mr. Bilchik, I was not surprised, but one of the items that you left out of the discussion about juvenile justice is the role of violence in our society, something that the chairman has been interested in. I must tell you I am rather pessimistic about what can be done by any office in this Government to combat what seems to be a growing amorality in our society. If you watch criminals in prison being interviewed on television programs, they say they are shocked by the absence of any morality on the part of the younger criminals coming into prison. They say in the good old days when we used to rob stores or banks or individuals, we would pull a gun and say give us your money and we will spare your life, and they would give us the money and we would spare the lives. Today, you give them the money and they still shoot you, and with no compunction, no hesitancy, no sense of regret that it may have been an accident.

I read a case in the Washington Post a couple of days ago about a man who left the District. His wife had been murdered—I think, 8 years ago—so he left the District to move out to Landover. He was working, as I recall, in a Sears department store out at the mall. He was taking a lunch break with a colleague and sitting in a car, and along came two teenagers, 17 years of age as I recall. They said give us money for bus fare, but before he or his companion could even respond yes or no or get lost, both of them were shot. He was shot fatally. So now we have a family left without a father or mother, both of whom were gunned down.

And what was again the point? Two 17-year-olds not waiting to see whether they would come up with the change for bus fare, but simply killing them without regard to the consequences. So I think that notwithstanding all of the good works that we have in mind for this office or any other, and notwithstanding all the money that we appropriate, until we look at what we are doing as a society and the violence that we praise, we will not solve the problem.

Violence virtually permeates our entire society. You look at television, the movies, videos, sports. We could look at football, for example, look at what they call the kamikaze squads that come down on the kickoffs and the return artists, and what do we praise? How hard they can take somebody down, which is then celebrated by the



commentators. So everything that we see in our society revels or promotes or rejoices at the sight of violence, and that is taking its toll. It has a consequence.

So this is a new phenomenon from what we used to see in the past, which I think explains at least in part what is taking place in our society.

You talked a little bit about the trying of juveniles as adults. I think you wrote an article back in 1985 which stirred some controversy, namely telling the advocates of juvenile justice do not be too concerned that we are lowering the age here in Florida for juveniles who can be tried as adults. Since that time, a number of States have followed suit. In California, for example, I think they have reduced the age down to 14. Is there some minimum below which we should not drop in terms of trying juveniles as adults?

I know that Senator Carol Moseley-Braun introduced an amendment during the debate on the crime bill in which she advocated that we reduce the age down to, I think, it was 14.

Senator KOHL. Thirteen.

Senator COHEN. I recall at the time saying, at the age of 13, I just got out of Little League baseball and just starting to mature at that point. The games that we used to play or the kind of tricks that we used to play were quite different than what is being done today by 13-year-olds, but still the notion that we are now reducing that age down to 13 to try people as adults is troubling. If you come from a city or an urban area, perhaps then you quickly become callused to any age differentiation. The question I ask, is there some age level below which we are still going to treat them as juveniles and not as adults?

Mr. BILCHIK. In my experiences in Florida, we have never advocated for an absolute cutoff age. What we looked for, and actually the system that was in place, was that for prosecutorial discretion and judicial waiver the lowest age was 14. However, for certain categories of offense, murder, life offenses such as armed robbery with a pistol, that we could go to the grand jury and have a child no matter what age transferred to the criminal court. But what we did is we instituted guidelines, factors that we needed to consider that would lead us as to whether we should transfer a child for criminal prosecution, and there were some situations where 12-year-old murderers did get indicted and transferred to the criminal court.

Our purpose was to make sure that, one, we put ourselves in an arena where we had the length of time needed to intervene with that person. Now in some situations, it was because we were looking for 25 years incarceration. In other situations, it was because we wanted long-term intervention. If it was a 12- or 13-year-old that we would be able to place him in a program and know that if they were successful in that program that we could later then, perhaps at 18 or 19, continue them on adult probation for the next 20 years.

So I think my approach on that is flexibility, that there should not be an absolute cutoff line, but we should have mechanisms in individual cases if it is needed, if it is appropriate, with prosecutorial and judicial intervention to decide, yes, this person should be transferred for criminal prosecution and for the following reasons.

Senator COHEN. One of the other criticisms is that we have been too lenient with juveniles and that many gang members, for example, take advantage of that. They employ young teenagers and even those who are preteens to sell drugs on their behalf, knowing that the juvenile justice system is not terribly effective. It certainly does not serve as any deterrent. How would you recommend that we deal with that problem? What kind of signals do we send to the younger population? The message should be that this is serious business, it is not just a slap on the wrist, and you are going to be dealt with in a very serious fashion?

Mr. BILCHIK. I think the messages we have sent are bad messages. We have not been able to deliver sanctions, appropriate sanctions, because of a lack of resources and facilities. Juveniles who commit serious offenses go into facilities perhaps 3 months after they should have been there and released 3 months earlier than they should have been released, and then they go back out on the street with the message that there is not much of a price to pay for our serious conduct, and they laugh about it. So I think building up our capacity to effectively intervene through the use of juvenile commitment facilities or when appropriate transferring for incarceration as adults is the answer to part of that. Then you send a consistent message there is a consequence to what you do.

Senator COHEN. The title V of the Juvenile Justice and Delinquency Prevention Act authorizes some \$30 million for delinquency prevention, but this title has not been funded. What is your recommendation going to be to the attorney general in terms of the funding of the title V?

Mr. BILCHIK. I think the title V funds should be funded. They are critical in relation to preparing States to use, for example, the crime act prevention money, a lot of which will be coming out in formula and block grant mechanisms. What we have done in the Juvenile Justice Agency under Mr. Wilson's leadership has been to prepare the States through a process of planning and strategy-building of what kind of programs they want to implement in their jurisdictions. The money that we had in that program obviously is not large enough to bring those programs to scale in the States across the country, but with their own money as well as the crime act money and prevention coming through next year, I think they will be prepared to use that money more effectively. I think it is important we continue that capacity building through the title V prevention money.

Senator COHEN. Mr. Bilchik, you are very fortunate. You have been saved by the bell. We have our eye on the clock back there, and we are just looking at the second bell, so to speak, and we have got to depart. I would also indicate to you that I have been enormously impressed with your background and your qualifications and also your commitment to this position, and I intend to support you.

Mr. BILCHIK. Thank you, Senator.

Senator KOHL. Thank you, Senator Cohen. I want to reiterate those comments. We have had a chance to get to know each other a little bit, and I also had a chance to get to know some of your predecessors, and they were all good people, but I, along with Senator Cohen, have really high hopes that you can indeed make a big

difference, and that you are going to be a lot of fun and a good guy to work with. So we are happy to have you here today and happy to have a chance to see your nice family and your son Zach and me are already good buddies. And so we are delighted to have you here today and we excuse you now, and we will be back in 10 minutes as soon as we finish the vote.

Mr. BILCHIK. Thank you, both. I look forward to working with you both.

[Recess.]

Senator KOHL. Our next nominee is Ms. Rose Ochi who has been nominated to be Associate Director of the Bureau of State and Local Affairs for the Office of National Drug Control Policy. Here to introduce Ms. Ochi is Congressman Julian Dixon.

**STATEMENT OF HON. JULIAN C. DIXON, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Representative DIXON. Thank you very much, Senator Kohl. I am very pleased to be here on behalf of the entire California congressional delegation to introduce to this panel the President's nominee for the Associate Director for National Drug Control and Policy. Rose Ochi comes with a diverse background that I am sure you are quite aware of from looking at her bio. She spent some of her formative years in what was traditionally called a relocation camp and later recognized as a concentration camp and has been one of the strong leaders that supported and was actively involved in providing strong leadership for the U.S. Congress and the President to recognize the error, the gross abuse of civil rights during World War II.

She has also served in California as a school teacher and an attorney, and for the past 20 years has worked for the city of Los Angeles both under Mayor Tom Bradley and our current Mayor Riordan as the director of the Office of Criminal Justice Planning, where she serves as an adviser both in criminal and drug problems. She is diversified in her community involvement. As I indicated, she has worked and provided pro bono services for Japanese-Americans who were strong in the leadership to provide legislation to bring equity. She has been a Presidential appointee for the Select Commission on Immigration and Refugee Policy.

She has been an advisor and was a consultant for the development of a training program for NOBLE, the National Organization of Black Law Enforcement Executives, and she is a person who has crossed ethnic lines, built coalitions, and brings not only a vast diversity of experience but strong dedication to eradicating drug problems in our society. I know that other members of our delegation wanted to be here, particularly Mr. Matsui and Mr. Mineta, but as we are pressing to leave on the seventh or maybe before, there are several markups today, and they could not be.

I am sure that you will not only be pleased with her professional background but her integrity and her broad commitment to the task of eradicating drugs in our society. With that I am pleased to present to you Ms. Rose Matsui Ochi.

Senator KOHL. Thank you, Congressman Dixon. Your endorsement lends an awful lot to her appearance before us here today. We appreciate your coming and sorry you had to wait for us.



Representative DIXON. That is quite all right. Thank you.

Senator KOHL. All right. Ms. Ochi, would you stand and take the oath of testimony? Do you swear the testimony you shall give in this proceeding shall be the truth, the whole truth, and nothing but the truth, so help you God?

Ms. OCHI. I do.

Senator KOHL. We thank you very much. And Ms. Ochi, if you have any family members or friends that you would like to introduce to us, we would be delighted to hear that right now.

**TESTIMONY OF ROSE OCHI, MONTEREY PARK, CA, TO BE ASSOCIATE DIRECTOR, BUREAU OF STATE AND LOCAL AFFAIRS, OFFICE OF NATIONAL DRUG CONTROL POLICY**

Ms. OCHI. Yes. I would like to introduce my husband, Tommy Ochi.

Senator KOHL. Mr. Ochi.

Ms. OCHI. And Karen Narasaki, who is the Washington Representative from the Japanese-American Citizens League, and many friends, staff, and colleagues who have joined here in supporting me. Thank you.

**QUESTIONING BY SENATOR KOHL**

Senator KOHL. Thank you. And we are delighted to have you all with us today. Ms. Ochi, the crime bill contains many measures aimed at reducing the toll that drug abuse is taking on our society. For example, it provides \$1 billion for drug courts and \$270 million for drug treatment for State prisons and also money for boot camps to house thousands of young drug offenders. My question is what crime bill programs, in your opinion, will have the most effect of reducing drug use and drug related crime?

Ms. OCHI. Senator, that's a difficult question because those you mentioned I think will contribute greatly to reducing drug crimes in our community, but let me pull out community policing, and the More Cops proposal. When I was the criminal justice planning director for the city, I developed the \$4 million Justice Department More Cops Program, and what we were able to do—this is a new program—but what we were able to do is to take these Federal dollars and to convert the LAPD's traditional delivery of a reactive type of policing to a more proactive, problem-oriented approach. I have over the 20 years serving in this capacity developed numerous programs, programs or projects that have been seeded by Federal dollars, and I know that these investments of Federal dollars can make quite a difference in terms of improving public safety.

The drug court is one that Los Angeles is very anxious, and just knowing that the concept of drug court is out there has begun planning and actually within existing resources is now conducting a drug court program. I believe the diversion of nonviolent drug offenders will do a lot by way of providing treatment and other human services, and that should help us in terms of the problems of drugs in our community.

Senator KOHL. Ms. Ochi, what has happened in our society? When I grew up some years ago, there were no drugs, never really had a problem at all. I mean I and my friends never had any exposure to drugs. What has happened? What has happened to our soci-

ety? Why do we have so many drugs that are available and prevalent? Why has it become such a problem? Many, many people that I talk to out around Wisconsin and elsewhere are baffled. They do not understand why we cannot control the problem of drugs in our society. What would you say to them? What is the answer?

Ms. OCHI. I think the problem of drugs has pretty much been with us for many, many, many years, and that there has been major efforts in times past where we have reduced consumption and we have reduced the availability of drugs. There are some positive indications now that there has been a decline in casual use. Unfortunately, the numbers for hard core chronic users remain very high. Another troubling sign is that we are seeing an increase in acceptability of use among young people and for some very young eighth graders we see some trends where they are experimenting now with amphetamines and also marijuana.

So I think that we need to look at the drug issue as a continuing issue, one that we need to sustain our efforts in terms of prevention, a very comprehensive approach involving treatment and enforcement.

Senator KOHL. I know, but I did a hearing on drugs and young people out in Wisconsin just a month ago, and I was in a fine community in Wisconsin, high standards, high level of achievement, high level of employment, educational levels are in a good position. I asked those kids, just regular kids from high school, drugs around? "Everywheres." Can you get them? Yes. Where? "Anywheres" you want. Now what do you tell those parents? What is your job? How are you going to improve that, that problem, or is that a partial statement of your mission?

Ms. OCHI. Our responsibilities are going to be to educate children at even younger and younger ages. Let me just tell you a situation from my experience. When we began the DARE program in Los Angeles, we began targeting high school students. Several years later, we focused on junior high. Today our program is conducted in elementary school level. We are now having to reach even younger and younger children, and I think that is what we need to do. We need to provide not only education in terms of the risk of substance abuse, but also teaching young people how to resist peer pressures.

Senator KOHL. All right. If you are confirmed, you will have the critical job of, as I said, as we are talking about, directing State and local affairs for the Office of National Drug Control Policy. Are you satisfied with the current level of Federal-State coordination and if not what else are you going to do to help ensure the coordination with the Federal Government, on the one hand, and State and local governments on the other hand are at a maximum level coordination?

Ms. OCHI. If I am confirmed for this office, one of my primary responsibilities and goals is going to be to improve the coordination. I think in addition to resources, technology transfer, technical assistance, what the Federal Government can do is serve as a catalyst to bring together various jurisdictions and agencies to come together in a common purpose. I feel with this coordination, it improves our ability to be more effective. An example of this is the High Intensity Drug Trafficking Program. This is a program that we have in Los Angeles. It began initially as a program to target

drug trafficking organizations and money laundering. It has now expanded to include a full spectrum of services integrating with criminal justice, providing treatment, and now evolving to include prevention as well. And what I think that the Federal Government can do is to serve as a catalyst to trying to bring these various entities together and also to through our program efforts such as drug courts integrate the law enforcement and the treatment community, and with programs such as Weed and Seed bringing together the human services element as well.

Senator KOHL. All right. Ms. Ochi, the administration has received substantial criticism for dramatically reducing the staff at the Office of National Drug Control Policy. I assume that you believe that such criticism is not warranted, but would you like to comment?

Ms. OCHI. With the reauthorization of the Office of National Drug Control Policy, included as well was an increase in staffing levels, and Dr. Brown and the administration is currently assessing what the new mandates under the act and our existing responsibilities would require, and we will be coming forward with a request for additional staff.

Senator Kohl. Ms. Ochi, as you may know, the drug CAT is a serious problem many places but also in my State of Wisconsin and also in the neighboring State of Michigan. This potent drug is gaining in popularity. A CAT lab was recently found in Virginia. The CAT high is rumored to be more intense than crack or cocaine and can last for up to 6 hours or 6 days—I am sorry—6 days. Last year Senator Levin and I passed legislation restricting access to large purchases of ephedrine, a main ingredient in CAT. However, law enforcement officials in Wisconsin say that this law is being circumvented.

Have you looked at the CAT issue, and if you are confirmed would you be willing to talk to law enforcement officers personally in my State about this problem?

Ms. OCHI. Yes, Senator, if I am confirmed I would like to talk to you and also the law enforcement representatives in Wisconsin and Michigan as well. I just was briefed about the problems having to do with CAT. They pose unique problems when you have drugs that are as devastating as cocaine and heroin, and yet are very attractive to young people. You are to be applauded for now the reclassification of this drug to category II, an illegal substance.

But when you have drugs that are so dangerous and yet the ability to use ingredients that are available here domestically, and I understand that it does not require too much sophistication in terms of the knowledge of chemistry and equipment to manufacture these drugs, that it does create special problems and that I would look forward to working with you and the law enforcement community to explore ways to curb the manufacture and distribution of these drugs, but more importantly we need to do a better job in educating young people that these drugs are dangerous.

Senator KOHL. All right. Are there any comments that you would like to make, thoughts you would like to express, Ms. Ochi, anything at all that is on your mind before we move on?

Ms. OCHI. Well, having come from local government, I am very excited about the prospects of working on implementing the crime



bill and the national drug control strategy. I think the thrust has changed. There has been a shift in resources for state and local governments, and so it is a wonderful opportunity. I have spent years in the field, and I am really looking forward to being an advocate and a champion for State and local government, being a liaison to Federal drug control agencies, but also to work with them in actually implementing the strategy.

Senator KOHL. All right. I think it is very clear that you are going to do an excellent job. I think we are lucky to have you. I will support your nomination, and thank you for coming here today.

Ms. OCHI. Thank you. I look forward to working with you.

[The prepared statement of Ms. Ochi and supportive statements of Senator Feinstein and Congressman Mineta follow:]

#### PREPARED STATEMENT OF ROSE M. OCHI

It is an honor to appear before the Committee today.

Mr. Chairman, you and the Members of the Committee understand full well the problems brought about by the use of illicit drugs in this country.

It would be a profound privilege for me to serve as Associate Director of National Drug Control Policy, and to join in Director Lee Brown's efforts to bring our nation's drug problem under control.

With your permission, I would like to make a brief statement about my background and my goals and objectives with the Office of National Drug Control Policy (ONDCP), and submit my written testimony for the record.

For almost twenty years, as Executive Director of the Mayor's Criminal Justice Planning Office, I worked to reduce the impact of crime and drugs in the City of Los Angeles. I am well aware that our communities need Federal help to impact the drug problem.

During this period, I have represented the City of Los Angeles before Federal, State and local bodies to formulate criminal justice policies, guidelines and laws.

In this capacity, I worked with many national and State organizations, such as the National League of Cities, Urban Consortium, Public Safety Committee, National Minority Advisory Council to the Department of Justice, Governor's Criminal Justice Coordinating Council, and the Los Angeles County Criminal Justice Coordinating Committee to improve public safety.

As a result, I believe the Federal government must provide the leadership to force a national partnership to fight drug production, distribution and use, by bringing together efforts at all levels of government as well as the private sector.

The Bureau of State and Local Affairs in ONDCP will play a key role in forming such partnerships.

I also believe that the process of formulating policy should include the concerns and ideas of the people working on this issue in communities throughout America.

Over the years, I have worked with numerous law enforcement organizations such as the Police Foundation, Police Executive Research Forum, National Organization of Black Law Enforcement Executives, National Institute of Justice, National Juvenile Court Judges, ABA Judges Division, and Department of Justice Community Relations Service.

I have helped the L.A. Prosecutor, the police department, schools and community organizations develop numerous programs such as drug enforcement targeting mid-level drug offenders, juvenile diversion, anti-gang, civil drug abatement, domestic violence, community mobilizations, drug treatment, and problem-oriented community policing.

These programs represent the same breadth and range of strategies: enforcement, prevention, intervention, drug treatment, and community policing, as those reflected in the Crime Bill that recently passed. We need a comprehensive and balanced approach to drugs, crime and violence that is both "tough and smart".

Some of the projects I have worked with have become national models, for example, DARE, Community Youth Gang Services and FALCON which is a drug abatement program. I have developed and know about programs that work; information about other successful projects needs to be identified and be more widely shared with communities around the country.

When the DARE program was established in L.A., the drug abuse prevention program targeted high school students. A few years later, the target shifted to junior

high school students. In the last several years, the DARE officers are primarily in elementary schools.

This change of focus is a sad commentary on the nature of the problem. We are faced with having to get out the message: "no use drugs", and to teach how to resist peer pressure to use drugs, to younger and younger children. We must focus on children.

Although we have had significant successes, particularly with casual users, the drug problem continues to destroy a cross-section of society—devastating lives and neighborhoods.

At the same time, it is encouraging to see how the concern over the drug crisis has generated citizens' activity. The call for community policing and the forming of new alliances has prompted community initiatives some of which were subsequently fortified with Community Partnerships grants that I helped design.

I know that an investment of a small amount of Federal dollars can yield big dividends supporting community empowerment.

The Target Cities Initiative brought together the City and the County for the first time to jointly provide treatment and services to special populations. From this project, I learned that Federal agencies can forge mergers of local delivery systems.

The extent of the drug problem has forced an acknowledgment that law enforcement alone cannot solve the drug problem in the U.S. It requires the involvement of all segments of the community: businesses, churches, schools, civic groups, residents forging a partnership with police, and other public agencies.

As Criminal Justice Planning Director before I left Los Angeles City, I helped design the \$4 million Justice Community Policing program. These Federal dollars allow the City to convert the Department's traditional policing approach to a genuine problem-oriented one. Community-oriented policing has proved successful at vastly reducing drug activities in targeted areas. The Federal government can play a vital role to change from reactive to proactive policing.

Since leaving Los Angeles, I have heard that LAPD will be handling domestic violence situations utilizing the prevention and intervention infrastructure created by community policing. There is a nexus between substance abuse and family violence. This is a problem area which we need to explore further.

Throughout my career, my goal professionally has been to improve the administration of justice. As a result, I have been able to leave behind a series of tangible improvements and changes.

I will bring this same dedication and hands on experience to the national level with a view toward helping States and local governments influence the National Drug Control Strategy, implement the Crime Bill and become involved in other drug-related initiatives.

The truth is that despite having made some progress on the local level—the drug epidemic rages on. When you think about the magnitude of America's drug problem and the challenge presented to our nation, it is clear we need a true Federal-Local partnership if we are to curb the flow of drugs to our communities.

In my view, the shift in resources to State and local governments is a good beginning, which recognizes that local government is primarily responsible for almost 90 percent of the criminal justice system workload. Moreover, this evidences a true Federal commitment to launch a national as opposed to merely a Federal effort.

The gains achieved in Federal, state and local counter-drug collaborations, a prime example of which is the High Intensity Drug Trafficking Program (HIDTA), give reason for hope.

Originally, HIDTA was established to create Federal/State and local partnerships to target drug trafficking and drug money laundering organizations. They are evolving into established linkages among law enforcement, prevention and drug treatment. Prevention activities will now interface with other human services.

The Washington/Baltimore HIDTA is becoming a prototype for "full spectrum" services and demonstrates the National Drug Control Strategy in action.

The National Strategy targets hardcore users. One priority will be to coordinate treatment with law enforcement—providing services to drug-abusing offenders in prison and on probation and parole.

I would like to develop a range of alternatives for non-violent drug users in conjunction with the Office of Justice Programs. No longer should we develop program solutions in a vacuum, we need to lay the groundwork to overhaul the criminal justice system to provide a more holistic response.

As Associate Director, I plan to coordinate with Justice, HUD, Education, Labor and HHS to better integrate Federal resources with that of State and locals.

We can create fiscal incentives for State and local communities to address drug abuse with an emphasis on coordination and integration of public health, criminal justice, education and social services.

I intend to be a champion for State and local governments on strategy development and serve as the liaison with Federal drug-related program agencies. I will work to encourage the actual implementation of the National Drug Control Strategy and the corresponding elements in the Crime Bill.

I believe ONDCP leadership can stimulate a collaboration with multi-jurisdictional and multi-agency collaboration.

The federal government can provide the resources, technology transfer and technical assistance. Towards this end, the Bureau of State and Local Affairs will play an essential role.

I will help design the counterdrug program models and support replication of programs that work across the country.

As a nation we are paying a horrible price for crime. If a country is as great as its people, if we are to rebuild the economic and social vitality of our country, we must deal more effectively with drugs and crime. Our future global competitiveness depends on it.

We, as a society, need to advocate long term solutions for crime, drugs and violence.

I believe we can again raise public awareness and decrease tolerance and abuse of illicit drugs.

I believe we can fight smarter to reduce the supply of drugs into our country and into our neighborhoods.

And I believe we can turn the drug crisis around. I would like the opportunity to act on my beliefs and make this happen.

If confirmed by the Senate, I will be privileged to apply my experiences and to work with the Senate Judiciary on this important undertaking.

I would be happy to answer any questions you may have at this time.

---

#### PREPARED STATEMENT OF SENATOR DIANNE FEINSTEIN

It is my pleasure to support the appointment of Rose Ochi to the post of Associate Director for the President's Office of National Drug Control Policy.

Rose Ochi has a strong educational background, having earned four higher education degrees in 15 years. In 1957, she received an Associate of Arts degree from Los Angeles City College. Thereafter, she earned a Bachelor of Science degree from the University of California, Los Angeles, in 1959. Ms. Ochi then pursued a Master of Arts degree from the California State College, Los Angeles, completing that degree in 1967. Finally, in 1972, Ms. Ochi obtained a Juris Doctor degree from the Loyola Law School, located in Los Angeles.

Ms. Ochi's extensive and exemplary record of service to the people of Los Angeles and the State of California as a whole, particularly in the areas of crime and drug policy, make her an excellent candidate for this national position. Let me list just some of her directly applicable experiences. Since September 1979, she served as the Executive Director of the Mayor's Office of Criminal Justice Planning in Los Angeles. During her long tenure there, Ms. Ochi became an acknowledged expert in drug enforcement policy and community based policing strategies. Between 1986 and 1987, Ms. Ochi was a Consultant at the Police Foundation. Finally, Ms. Ochi also served on several crime-related advisory bodies, including the National Council on Crime and Delinquency, the Governor's Criminal Justice Coordinating Council and the Los Angeles County Criminal Justice Coordinating Committee.

Frankly, Mr. Chairman, what impresses me most about Rose Ochi is not just her resume, but how she has translated her experience into action. She has taken a leading role in developing pioneering programs in drug treatment, prevention and enforcement; community policing, crime prevention; and juvenile justice. Mayor Richard Riordan of Los Angeles put it best when he described Rose Ochi this way. Mayor Riordan said, "She has a reputation of working with people and making things happen."

In summary, Mr. Chairman, Rose Ochi is clearly a woman of experience, a woman of integrity and a woman of action. I am confident that in her new position she will prove to be as great an asset to this administration and the nation as she has been to California.

Thank you, Mr. Chairman.



CONGRESS OF THE UNITED STATES,  
HOUSE OF REPRESENTATIVES,  
Washington, DC, September 28, 1994.

Hon. JOSEPH R. BIDEN, Jr.,  
*Chairman, Committee on the Judiciary,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE: I am sorry that I could not appear in person for the Committee's hearing today on the President's nomination of Rose Matsui Ochi as Associate Director of National Drug Control Policy. I hope that you will agree to place this letter in the hearing record as an indication of my enthusiastic and unqualified support for her nomination.

I am absolutely confident that President Clinton could not have made a better choice for this position than Rose Ochi. Her distinguished career in the field of drug policy and criminal justice make her uniquely qualified for this important position.

If confirmed, Rose will become the head of Office of National Drug Control Policy's Bureau of State and Local Affairs. State and local governments around the country struggling with the issues of narcotics control and crime will find Rose to be an understanding voice, a skilled advocate, and a dedicated crusader on their behalf.

Her many years of experience as the Executive Director of the Criminal Justice Planning Office for the City of Los Angeles have given her a firm understanding of the challenges faced by local and state governments in fighting drug abuse and the drug trade. Her work has justly earned her praise and recognition from leaders of both parties at the state, local and national levels.

Rose's career has been spent in trying to make a difference for her community. I know of no individual who has shown more skill and dedication in that pursuit. I enthusiastically endorse her nomination, and hope the Committee will quickly confirm her in this position.

Thank you very much for your consideration. If you would like further information, or if I can answer any questions about Rose, please do not hesitate to contact me.

Sincerely yours,

NORMAN Y. MINETA, M.C.,  
*Chairman, Congressional Asian*  
*Pacific American Caucus.*

Senator KOHL. Thank you. This hearing is closed.  
[Whereupon, at 11:55 a.m., the committee adjourned.]  
[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

**Sheldon "Shay" Carl Bilchik**

2. Address: List current place of residence and office address(es).

**Residence: 9637 Reach Road, Potomac, Maryland 20854**

**Office: U.S. Department of Justice  
10th and Constitution Avenue, NW, Room 4218  
Washington, D.C. 20530**

- 3) Date and place of birth.

**4/17/53, Toledo, Ohio**

- 4) Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

**Married, Susan Dee Bradley - Mental Health Therapist,  
Children of Separation and Divorce Center, 2001 Century  
Plaza, Room 121, Columbia, Maryland 21044**

- 5) Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**University of Toledo, 9/71-5/72**

**University of Florida, 9/72-3/75, B.S.B.A. degree (3/75)**

**University of Florida Law School, 3/75-6/77, J.D. degree (6/77)**

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**Office of the State Attorney, Dade County, Florida,  
8/77- 7/93**

**-- position held: Assistant State Attorney**

**National Center for Juvenile Justice, 1991-6/93**

**-- position held: Consultant**

**U.S. Department of Justice, 7/93 to present**

**-- position held: Associate Deputy Attorney General**

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Omicron Delta Kappa Honor Society for academic and leadership achievement, University of Florida

Florida Blue Key leadership society, University of Florida

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Florida Bar Association, 1977-1994; I have held no office, but remain in good standing as of this date.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to no organizations which are active in lobbying before public bodies. I belong to the Florida Bar, Washington Hebrew Congregation and Country Glen Pool Club. Country Glen is a neighborhood pool and tennis facility that has a diverse membership. I am attaching a copy of Country Glen's by-laws for your review.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I am admitted to practice in the Florida state courts, admitted November, 1977.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law



or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**"Prosecuting Juveniles in Criminal Courts -- A Legal and Empirical Analysis" - 1984**

Published by: Northwestern University School of Law in the Journal of Criminal Law and Criminology, Summer, 1985

Court Handbook for Dade County, Florida, Juvenile Practice Section, February, 1980; update 1991.

I do not have the exact text for any speeches I have given, or a transcript from any speeches on constitutional law or legal policy. All of my speeches were given from either handwritten notes, or prepared text which I modified slightly during the actual speech. I am enclosing the only two speeches for which I had prepared a text. I have not retained any handwritten notes which I used for my other presentations. I am also enclosing two copies of my Northwestern article and the 1991 Update of the Juvenile Practice Section of the Dade County Court Handbook. I have not been able to obtain a copy of the 1980 Handbook.

I also gave testimony to the Subcommittee on Juvenile Justice of the Committee on the Judiciary of the U.S. Senate, concerning juvenile justice in Wisconsin, and to the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, on the Weed and Seed program. I am attaching copies of that testimony for your review.

13. Health: What is the present state of your health? List the date of your last physical examination.

My present health is excellent. My last physical examination was in the summer of 1993.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was appointed as an Assistant State Attorney in the Office of the State Attorney in Dade County, Florida in August of 1977, and held that position until July 1993.

I was appointed as Associate Deputy Attorney General in the Office of the Deputy Attorney General at the U.S. Department of Justice in July 1993 and presently hold that position.

I have never run for elective public office.

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

8/77-7/93: Assistant State Attorney, Office of the State Attorney, Dade County, Florida

7/93-Present: Associate Deputy Attorney General, Office of the Deputy Attorney General, U.S. Department of Justice.

I have never clerked for a judge, nor have I ever practiced alone.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice has been solely involved in criminal and juvenile law, both as an Assistant State Attorney and Associate Deputy Attorney General. I assumed and have maintained administrative and supervisory responsibilities in the positions I have held since 1979.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My clients were the citizens being served by the Dade County State Attorney's Office and the U.S. Department of Justice. I have specialized in criminal and juvenile law in both positions I have held.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your

appearance in court varied, describe each such variance, giving dates.

Between 1977-1979, I frequently appeared in court as a trial attorney on behalf of the State Attorney's Office in Dade County, Florida. Beginning in 1979, I appeared in court less frequently due to the supervisory nature of my job. The times I did appear in court were usually in my supervisory capacity. Many of these appearances were requested by the court.

2. What percentage of these appearances was in:
  - (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

100% of my appearances were in state court.

3. What percentage of your litigation was:
  - (a) civil;
  - (b) criminal.

100% of my litigated cases were criminal, with many of the criminal cases relating to juvenile delinquency.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried approximately 100 cases to verdict with approximately 25% of those cases involving co-counsel. I served as lead counsel in 90% of these 100 cases.

5. What percentage of these trials was:
  - (a) jury;
  - (b) non-jury.

Approximately 25% of these were jury trials.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
  - (b) the name of the court and the name of the judge or



- judges before whom the case was litigated; and  
 (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Due to the fact that I only litigated for a limited amount of time before assuming supervisory responsibilities in the State Attorney's Office in Dade County, Florida, I do not have 10 cases which I believe are significant enough to mention. The following four cases are the most significant cases to which I am able to cite. Please note, however, that the cases I handled in the Juvenile Division do not have records which I can access either manually or by computer and, therefore, I will not be able to cite them by case name or docket number. Additionally, I am unable to remember the case name for a. below.

- a. In approximately 1979, I handled a case in the courtroom of Circuit Court Judge Ellen Morphonios, Dade County, Florida. There was no co-counsel and I do not have the name of the public defender assigned as defense counsel. The case involved a 16-year old defendant who burglarized an elderly victim's home and brutally beat the victim while robbing her. I was serving as Juvenile Division Chief at the time of the defendant's arrest. The case was transferred to the criminal court for prosecution as an adult. I maintained my involvement in the case after it was transferred. Due to the vicious nature of the attack, the State was seeking a sentence of State prison time. The victim was fearful for her safety and was physically unable to appear in court due to her injuries. I spent a substantial amount of time working with the victim to ease her fears concerning the prosecution of the case. I also ended up perpetuating her testimony in order to secure her "appearance" for the trial. The defendant was sentenced as an adult in the Florida State Prison System. I maintained contact with the victim for several years, keeping her abreast of the defendant's custodial status.
- b. State of Florida v. Kenneth White, Docket Number #F83-025544. Circuit Court Judge David Gersten, Dade County, Florida

My co-counsel was Michael Cornely and the defense counsel was Steven Levine of the Public Defender's Office. Michael Cornely can be reached at Hartman and Cornely, 10680 N.W. 25th Street, Suite 200, Miami, Florida 33172-2108, Telephone: (305) 447-1184. Steve Levine is presently a Circuit Court Judge in Dade County, Florida and can be reached at 3300 N.W. 27th Avenue, Miami, Florida, Telephone: (305) 638-6106.

Kenneth White was charged with the murder of his mother and younger brother in 1983. The murders were a result of an on-going dispute between Kenneth White and his mother about his behavior, and his placement at a private military-style school. He plotted to murder his mother using his father's pistol; and when his younger brother arrived home earlier than expected, he decided to also murder him. Kenneth White was 13 years old at the time he committed these crimes. I was serving as Juvenile Division Chief and decided to seek indictment and transfer for criminal prosecution for the offender. Due to the psychological and psychiatric evaluations of the offender, the State decided to seek a sentence that would attempt to rehabilitate the offender, while at the same time protecting the community. The defendant was committed to a psychiatric institution, where he remained for approximately four years before being released into the custody of a hospital worker who became his guardian. The defendant was on probation during this time period, and will remain on probation for approximately 20 years. The defendant has maintained his involvement in therapy, has been free of any new involvement in the criminal justice system and, as of my last contact with the case in the spring of 1993, was attending college.

- c. In approximately 1981, I prosecuted a case in the Juvenile Circuit Court in Dade County, Florida, involving a 16-year old defendant who was charged with sexually assaulting a girl while he was on a date with her -- in today's terminology, a date rape. The case was prosecuted in the court room of Judge Adele Feske. There was no co-counsel. I cannot remember the defendant's or his counsel's name. This was an extremely difficult case to prosecute, both in securing the victim's cooperation and in countering the defendant's defense of consent. The defendant was found guilty and sentenced to juvenile sanctions including counseling.

- d. State of Florida v. George Troutman. Docket #82-20282

In 1982, I prosecuted this defendant for 1st degree murder. My co-counsel was Samuel Rabin, who served as lead counsel. Mr. Rabin can be reached at The White Building, 1 N.E. 2nd Avenue, Suite 204, Miami, Florida 33132-2543, Telephone: (305) 358-1064. Tom Headley was the defense counsel. He can be reached at 2701 S. Bayshore Drive, Suite 402, Miami, Florida 33133-5359, Telephone: (305) 856-4156. The case was tried in the courtroom of Circuit Court Judge Arthur Snyder. This case involved a defendant who shot and killed a victim who was attempting to take over the territory in which the defendant sold drugs. The defendant was convicted

after a jury trial and was sentenced to 25 years in State prison. The significant aspect of this case, was the fact that the only eye witness believed that her life was in danger and at first refused to cooperate in the prosecution. After extensive meetings with the witness, she decided to testify regardless of her concern for her own safety. At a time when so many citizens who fear retribution choose not to get involved in the criminal court system, this witness showed tremendous courage and strength.

e. Due to my citing less than ten cases in answer to this question, I am also including the names of professional references who can address my performance in the positions I held as an Assistant State Attorney:

- 1) State Attorney Katherine Fernandez Rundle, Office of the State Attorney, Dade County, Florida  
Telephone: (305) 547-0535. (Co-worker and supervisor)
- 2) Chief Assistant State Attorney Gerald Bagley, Office of the State Attorney, Dade County, Florida (Co-worker)  
Telephone: (305) 547-0562.
- 3) Chief Assistant State Attorney Trudy Novicki, Office of State Attorney, Dade County, Florida (Co-worker)  
Telephone: (305) 547-0664.
- 4) Juvenile Justice Chief Leon Botkin, Office of the State Attorney, Dade County, Florida (under my supervision)  
Telephone: (305) 637-1324.
- 5) Judge William Gladstone  
Telephone: (305) 598-9265.
- 6) Mayor Seymour Gelber, Retired Circuit Judge, Dade County, Florida  
Telephone: (305) 673-7030.
- 7) Judge Thomas K. Peterson, Circuit Judge, Dade County, Florida  
Telephone: (305) 638-6873.
- 8) Judge Bruce Levy, Circuit Judge, Dade County, Florida  
Telephone: (305) 638-6238.
- 9) Michael Cornely, Defense Attorney, Dade County Florida (Co-worker)  
Telephone: (305) 447-1184.



10) George Yoss, Defense Attorney, Dade County,  
Florida (supervisor)  
Telephone: (305) 858-5555.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)
- a. In approximately 1984, I helped develop a protocol in the Dade County criminal justice system for the handling of victims of child abuse. I researched systems which were being developed, or existed, in other areas of the country that addressed this issue. Child advocates, prosecutors and law enforcement personnel had all expressed concern about the trauma that victims of child abuse suffered in the handling of their cases. This included concern regarding interviewers who were insensitive to children's needs, repetitive interviews, cold and sterile interview rooms and a lack of crisis counseling. An interagency team was formed to address these issues and helped to develop a consensus which led to the adoption of a protocol which I co-authored and helped implement in 1985. The Children's Assessment Center of the Dade County State Attorney's Office has been operating on an interagency basis since that time.
  - b. Through my position as Chief Assistant for Administration in the Dade County State Attorney's Office, with oversight responsibilities for juvenile-related matters, I had several opportunities to become involved in drafting proposed legislation. These opportunities dealt with issues such as the admissibility of evidence in child abuse cases, the transfer of juveniles for criminal prosecution, and procedures involving juveniles prosecuted in the juvenile courts. My involvement was through the Florida Prosecuting Attorney's Association and by invitation of various legislative committees.
  - c. In my position as Deputy Chief and Chief Assistant State Attorney for Administration from 1982-1993, I assisted the State Attorney in the management of the attorney staff. During those years, this staff ranged from approximately 140 -240 attorneys. I oversaw

recruiting, hiring, training, attorney assignment, promotions, salary increases and evaluations for these lawyers. I also had supervisory responsibility for the County Court and Juvenile Divisions, as well as for the cases of juveniles transferred for prosecution as adults and the operation of our Children's Assessment Center described in a. above.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am enrolled in a deferred compensation plan through my prior employment with the State of Florida. The plan is administered by Aetna Insurance Company. The present value of this plan is approximately \$117,000. I will be able to access these funds in June of 2013.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate having any present conflicts-of-interest in entering service in my new position. If any conflict arises, I will resolve the conflict by either divesting myself of any financial or personal interest which is creating the conflict, or by recusing myself from involvement in the decision-making process presenting the conflict. I will also seek advice from the Department of Justice Ethics Officer as to my potential conflict of interest.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

None.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please note the attached Financial Disclosure Report in response to this question.



5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**Note attached Financial Disclosure Net Worth Statement.**

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I campaigned for Janet Reno in her elections for State Attorney in Dade County, Florida, between 1979 and 1992. I was not an officer in the campaign, but assisted the campaign during non-office hours.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In 1992, I assisted victims of Hurricane Andrew on several occasions by helping to clean out debris, board broken windows, and provide water and canned food. I spent approximately 30-40 hours in this activity.

Throughout my years as an Assistant State Attorney I visited numerous schools and community groups speaking on issues facing our youth (e.g. child abuse and neglect, drugs and violence) participated in career days, and taught classes as a visiting lecturer at the elementary, secondary, college and law school levels.

On several occasions, I participated with my children in neighborhood beautification projects -- cleaning up trash and planting barren areas.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I belonged to a college fraternity, Alpha Epsilon Pi, which did not admit women as full members. I was active in the fraternity from 1973-1977, but have had no involvement since that time.

# FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	25,000	00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	108,714	00	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due*	2,500	00
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	420,000	00
Real estate owned—add schedule	570,000	00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	35,000	00			
Cash value—life insurance	2,000	00			
Other assets—itemize:					
See SCHEDULE of other assets	230,696	00			
			Total liabilities	422,500	00
			Net worth	971,410	00
			Total liabilities and net worth	971,410	00
Total assets	971,410	00			
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	NO		Are any assets pledged? (Add schedule.)	NO	
On leases or contracts	NO		Are you defendant in any suits or legal actions?	NO	
Legal Claims	NO		Have you ever taken bankruptcy?	NO	
Provision for Federal Income Tax	NO				
Other special debt	NO				

\*Credit Cards & Utilities —  
all within due dates



## ADDENDUM - LISTED SECURITIES SCHEDULE

<u>Securities</u>	<u>Value</u>
AT & T Corp .....	\$ 5,462.00
OUTBACK STEAKHOUSE .....	11,362.00
GENERAL ELECTRIC COMPANY. ....	20,150.00
IMATRON, Inc. ....	2,895.00
PEPSICO, Inc. ....	3,050.00
NACCO Industries, Inc. ....	5,525.00
SOUTHWEST AIRLINES CO. ....	3,933.00
EURODISNEY .....	562.00
BOEING Co. ....	4,500.00
DISNEY Co. ....	34,000.00
COCA COLA .....	8,875.00
SOUTHWESTERN BELL .....	8,400.00
TOTAL	\$108,714.00

## ADDENDUM - OTHER ASSETS SCHEDULE

Deferred Compensation Stock and Money Market Fund	
Aetna Life Insurance .....	\$117,427.00
Stock Fund - Magellan Fidelity .....	2,314.00
Stock Fund - Fidelity Growth and Income .....	23,295.00
Stock Fund - Mutual Shares .....	8,434.00
Annuity, Pacific Fidelity Ins. Co. ....	39,000.00
Seacoast Florida Utilities Bonds .....	11,880.00
Clark County School Bonds .....	17,305.00
Greater Orlando Aviation Bonds .....	11,041.00
TOTAL	\$230,696.00

## ADDENDUM - REAL ESTATE OWNED SCHEDULE

Lee County, Florida; 8 acres of undeveloped property on Cork Screw Road .....	45,000.00
Residence located 9637 Reach Road .....	525,000.00
TOTAL	\$570,000.00

## ADDENDUM - REAL ESTATE MORTGAGE SCHEDULE

Home Mortgage, Nations Bank Mortgage Co. ..	420,000.00
---	------------

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

1

I BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Current: Rose M. Ochi

Former: Takayo Matsui  
 Rose Matsui  
 Takayo Rose Matsui  
 Rose Matsui Ochi

2. Address: List current place of residence and office address(es).

Residence: 730 South Lincoln Avenue  
 Monterey Park, CA 91755-4046

Business: Mayor's Office  
 City Hall  
 200 North Spring Street  
 Room 1404  
 Los Angeles, California 90012

3. Date and place of birth.

Date of birth: December 15, 1933

Place of birth: Los Angeles, California

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Marital status: Married - (August 24, 1963)

Husband:

Name: Thomas Hiroaki Ochi

Occupation: Architect

Employer: Self employed - Sole proprietor

Business address: Thomas H. Ochi, A.I.A.  
 730 South Lincoln Avenue  
 Monterey Park, California  
 91755-4046

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

2

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.
1. Los Angeles City College  
 September, 1955 to June 1957  
 Associate of Arts Degree - June 1957
  2. University of California, Los Angeles  
 September, 1957 to June 1959  
 Bachelor of Science - June 1959
  3. California State College, Los Angeles  
 June 1960 to August 1967  
 Master of Arts - August 1967
  4. Loyola Law School (Los Angeles)  
 September 1968 to June 1972  
 Juris Doctor - June 1972
6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- July, 1979 to Present:  
 City of Los Angeles  
 Mayor's Office of Criminal Justice Planning  
 Director
- October, 1990 to Present:  
 Los Angeles Community College District  
 Personnel Commissioner
- January, 1979 to March 1981:  
 Select Commission on Immigration & Refugee Policy  
 Commissioner
- 1986 to 1987:  
 Police Foundation  
 Consultant
- June, 1972 to August, 1974:  
 University of Southern California  
 Western Center on Law and Poverty  
 Staff Attorney



UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

3

1965 to 1968  
 Los Angeles Unified School District  
 Teacher

1961 to 1965  
 Montebello Unified School District  
 Teacher

1959 to 1960  
 West Covina Unified School District  
 Teacher

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Reginald Heber Smith Fellowship

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Los Angeles County Bar Association, Member, 1972 to Present

Board of Trustees, Member, 1978 to 1979  
 Neighborhood Justice Center, Board of Directors  
 State Bar Conference of Delegates, 1978 to 1979  
 Human Rights Committee, Member, 1978 to Present  
 Judicial Evaluation Committee, Member, 1980 to 1981

State Bar of California

Disciplinary Referee Pro Tem, 1976 to 1979  
 Legal Services Section, Member Executive Committee, 1977 to 1983  
 State Bar Conference of Delegates, Delegate 1982  
 Client Trust Fund Commission, Member, 1983, Chair, Grant Procedures, Vice Chair, 1985

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

4

Japanese American Bar Association, Organizing Member  
 and Board of Directors, 1977  
 Program Chair, State Bar Conference of Delegates,  
 Delegate 1978 to 1979

Minority Bar Association, Founding Member, 1977

Women Lawyers Association, Member, 1972 to 1983

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations that are active in lobbying:

None.

Organizations to which I belong:

Los Angeles County Bar Association  
 UCLA Alumni Association Life Member  
 Japanese American Citizens League, Life Member  
 Japanese American Historical Society  
 National Association of Criminal Justice Planners,  
 Executive Committee  
 Japanese American National Museum

Organizations in which I once held membership:

California Leadership, Board of Directors  
 National Council on Crime and Delinquency, Board  
 The Ethnic Coalition, Co-Chair  
 Japanese American Bar Association  
 Leadership for Southern California  
 Manzanar Committee, Pro Bono Counsel  
 Japanese American Democratic Club  
 National Women's Political Caucus, Metro Chapter  
 Center for Human Rights and Constitutional Law  
 Nestle Women's Advisory Board  
 United Way Los Angeles, Vice Chair of Corporate  
 Board  
 Los Angeles 2000 Partnership Diversity Task Force  
 League of Women Voters Advisory Committee  
 National Institute Against Prejudice & Violence  
 Board  
 Pacific Asian American Women Writer's Association  
 Board  
 Japanese American Community and Cultural Center  
 Founder's Church, Board

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

5

1. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

California Supreme Court December 1972

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were available to you, please supply them.

Published Writings:

Select Commission on Immigration and Refugee Policy  
 Final Report Supplemental Statement - March 1981  
 (attached)

National Minority Advisory Council to the Department of Justice,  
 A Report on Crime and the Administration of Justice in the Minority Community, January 1982. Edited chapter, "Impact of Crime and the Criminal Justice on the Asian Americans".  
 (attached)

American Bar Association, Judges Journal, Hidden Biases & Judicial Rulings, The dark side of the law examined - Winter 1985. Wrote section entitled, "Racial Discrimination in Criminal Sentencing."  
 (attached)

California Attorney General Asian Pacific Islander Advisory Committee, Final Report - December 1988 Edited Chapter on "Criminal Justice Issues."  
 (attached)

Speeches:

Wartime Commission testimony  
 (attached)

House Interior and Insular Affairs Committee  
 Subcommittee on National Parks and Public Lands.



UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

6

Presented testimony in support of Manzanar National  
 Historic Site designation.  
 (attached)

\* Other speeches and presentations do not involve  
 constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Last physical examination - July 1993.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Select Commission on Immigration and Refugee Policy -  
 Presidential Appointee  
 March 1978 - March 1981

Los Angeles Community College, Personnel Commission -  
 State Community College Board Appointee  
 October 11, 1990 - to the present.

Unsuccessful bids for public office:

Monterey Park Unified School District Board of  
 Trustees-June 1977

U.S. Congress CA - 30th primary open seat - June  
 1982

Los Angeles Community College Board of Trustees -  
 June 1989

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Not applicable.

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

7

2. whether you practiced alone, and if so, the addresses and dates;

Not applicable.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

University of Southern California,  
 Western Center on Law and Poverty  
 3701 Wilshire Boulevard  
 Los Angeles, California 90010  
 Legal Assistant and Staff Attorney  
 August 1972 - June 1974

City of Los Angeles, Mayor's Office  
 Criminal Justice Planning Office  
 200 N. Spring Street Rm 1404  
 Los Angeles, California 90012  
 Executive Assistant to the Mayor and  
 Director of Criminal Justice Planning Office  
 June 1974 - April 1994

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

Practiced law for approximately two years.  
 Served as a legal assistant after taking the bar examination from August to December 1992.

Worked on only one lawsuit, Serrano vs. Priest for almost two years assisting in trial preparation, legal research and drafting memorandums and briefs.

As Director of Criminal Justice responsibilities included coordinating policy and program development for crime drug juvenile justice, domestic violence, and etc.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

See question 16.

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

8

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Serrano trial 6 month duration from December 1972 to June 1973, and case proceedings to June 1974.

2. What percentage of these appearances was in:

(a) federal courts;

None

(b) state courts of record;

Serrano vs. Priest in Los Angeles Superior Court

(c) other courts.

None

3. What percentage of your litigation was:

(a) civil; ----- Serrano 100%

(b) criminal.----- No criminal litigation.

4. State the number of cases in courts of record you have tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Serrano as an associate counsel.

5. What percentage of these trials was:

(a) jury; ----- 0%

(b) non-jury. ----- 100% (Serrano)



UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

9

16. Litigation. Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

Serrano vs. Priest, 5 Cal.3d 584 (1971)  
 C938254 - Los Angeles Superior Court 131 Cal.App.3rd 188(198

This action challenges the constitutionality of the California system of financing public elementary and secondary education. Represented the Plaintiffs, who are certain Los Angeles County public school children and their parents who have brought a class action for declaratory and injunctive relief against certain state and county officials charged with the responsibility of administering the financing of the California public school systems. Judgment for plaintiffs.

- (a) the date of representation

September 1972 - June 1974

- (b) the name of the court and the name of the judge or judges before whom the case was litigated:

Los Angeles Superior Court  
 Judge Bernard Jefferson

- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Judge Terry J. Hatter (Former Director of WCLP)  
 U.S. Courthouse,  
 312 N. Spring Street  
 Los Angeles, California 90012 (213) 894-5784.

Opposing Counsels: John Briggs and Donovan Main,  
 Assistant County Counsel,  
 500 W. Temple Street  
 Los Angeles, California 90012 (213) 974-1829

17. Legal Activities: Describe the most significant legal

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

10

activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Not applicable - Work at the City of Los Angeles would not be considered "legal activities."

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

No such arrangements other than pensions from the Los Angeles City Employees Retirement System and the California State Teacher's Retirement System.

PENSIONS:

- a. Los Angeles City Employees Retirement System  
 \$2,122.00 - (Approximate monthly gross)  
 Effective date of retirement - April 9, 1994
- b. California State Teachers Retirement System  
 \$55.00 - (Approximate monthly gross)  
 Effective date of retirement - (being processed)

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I do not anticipate any potential conflict of interest.

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

11

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No such plans, commitments or agreements to pursue outside employment.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

1993 INCOME:

City of Los Angeles -----	\$ 68,032.31
L. A. Community College District -----	4,500.00
Bank of America (interest) -----	566.26
Trust Savings Bank (interest) -----	278.93
Trust Savings Bank (interest) -----	2,155.64
TOTAL -----	\$ 75,533.14

1994 INCOME (thru February, 1994):

City of Los Angeles -----	\$ 10,748.40
L. A. Community College District -----	600.00
Bank interest (approx. - 3 accounts) -	485.00
TOTAL -----	\$ 11,833.40

\* Note: No income from fees, dividends, gifts, rents, royalties, patents, honoraria or other items.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

(see attached).



UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

12

6. have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Other than in my own races, I have never held a position or played a role in a political campaign. However, I have worked as a volunteer on voter registration and "GOTV" for several campaigns over the last twenty years.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have served in volunteer leadership roles in the United Way of Greater Los Angeles in several capacities: Vice Chair at Large, Chair of the Community Issues Council, Chair of the Global Cities Task Force and numerous committees. I donated approximately eight hours per month to these activities for over a period of ten years.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
ROSE M. OCHI

ATTACHMENT

FINANCIAL STATEMENT

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

1

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans and other financial obligations) of yourself, your spouse, and other immediate members of your household.

## ASSETS (March, 1994)

Cash on hand and in banks -----	\$ 149,000.00
U.S. Government securities ----- (add schedule)	0.00
Listed securities ----- (add schedule)	0.00
Unlisted securities ----- (add schedule)	191,000.00
Accounts and notes receivable:	
Due from relatives and friends -----	0.00
Due from others -----	0.00
Doubtful -----	0.00
Real estate owned ----- (add schedule)	248,000.00
Real estate mortgage receivable -----	0.00
Autos and other personal property -----	55,000.00
Cash value - life insurance -----	0.00
Other assests - itemize -----	0.00
<b>TOTAL ASSETS -----</b>	<b>\$ 643,000.00</b>

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

2

LIABILITIES (March, 1994)

Notes payable to banks - secured -----	\$	0.00
Notes payable to banks - unsecured -----		0.00
Notes payable to relatives -----		0.00
Notes payable to others -----		0.00
Accounts and bills due -----		0.00
Unpaid income tax -----		0.00
Other unpaid tax and interest -----		0.00
Real estate mortgage payable ----- (add schedule)		2,287.00
Chattel mortgages and other liens payable -----		0.00
Other debts - itemize -----		0.00
TOTAL LIABILITIES --- \$		2,287.00

NET WORTH ----- \$ 640,713.00

TOTAL LIABILITIES AND NET WORTH ----- \$ 643,000.00

CONTINGENT LIABILITIES (March, 1994)

As endorser, comaker or guarator -----	\$	0.00
On leases or contracts -----		0.00
Legal claims -----		0.00
Provision for Federal Income Tax -----		0.00
Other special debt -----		0.00

GENERAL INFORMATION

Are any assets pledged? (add schedule)

No.



UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

3

Are you defendant in any suits or legal actions?

No.

Have you ever taken bankruptcy?

No.

FINANCIAL STATEMENT SCHEDULES

CASH ON HAND:

Bank of America (Checking) -----	\$ 29,000.00
Trust Savings Bank (Checking) -----	32,000.00
Trust Savings Bank (Savings) -----	88,000.00
TOTAL -----	\$ 149,000.00

UNLISTED SECURITIES:

Mutual Trading Co., Inc. (Common Stock) -----	\$ 25,000.00
Trust Savings Bank (Common Stock) -----	166,000.00
TOTAL -----	\$ 191,000.00

REAL ESTATE OWNED:

Real estate owned in joint tenancy with my husband,  
 Thomas H. Ochi:

1. Residence:

Single Family Residence -----	\$ 200,000.00
730 S. Lincoln Ave	
Monterey Park, CA 91755	

2. Unimproved Residential Lot:

Vacant lot -----	\$ 25,000.00
22821 Branch Court,	
Tehachapi, CA	

UNITED STATES SENATE COMMITTEE ON THE JUDICIARY  
 QUESTIONNAIRE FOR NON-JUDICIAL NOMINEES  
 ROSE M. OCHI

4

\*\*\*Real property held jointly with:  
 brother, George Y. Matsui and  
 sister, Frances M. Fujinami:

1. Unimproved Residential Lot:  
 2.62 acres - Riverside County, CA -- \$ 55,000.00
  2. Unimproved acreage:  
 20 acres - San Bernardino County, CA 7,000.00
  3. Unimproved acreage:  
 1.25 acres - San Bernardino County, CA 3,500.00
  4. Unimproved acreage:  
 1.25 acres - San Bernardino County, CA 3,500.00
- TOTAL ----- \$ 69,000.00

\*\* Note! - These are the approximate total values held  
 jointly with my brother and sister.  
 My share is one third of the values listed.

REAL ESTATE MORTGAGE PAYABLE:

HOME MORTGAGE (principal balance) ----- \$ 2,207.00  
 (primary residence - Monterey Park, CA)

Lender:

Metmor Financial, Inc.  
 9225 Indian Creek Parkway  
 Suite 300  
 Overland Park, KS 66210  
 Phone 800-874-1340

**NOMINATIONS OF FRED I. PARKER, TO BE  
U.S. CIRCUIT JUDGE; HELEN W. GILLMOR,  
DAVID A. KATZ, SEAN J. McLAUGHLIN, WIL-  
LIAM T. MOORE, JR., ROSLYN SILVER, AND  
ALVIN W. THOMPSON, TO BE U.S. DISTRICT  
JUDGES**

---

**WEDNESDAY, SEPTEMBER 28, 1994**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 2:10 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Patrick J. Leahy presiding.

Also present: Senators Metzenbaum, DeConcini, and Pressler.

**OPENING STATEMENT OF SENATOR LEAHY**

Senator LEAHY. We have sort of a full house here and I want to welcome everybody here to what is one of the most important functions in the Senate, the advise-and-consent aspect of our responsibilities. I don't think there is anywhere where that is more important than when we are dealing with Federal judgeships because they are lifetime appointments.

We have a number of nominees pending before the committee. I might suggest that this is a somewhat unusual way of doing it, and I apologize to the judicial nominees. We could have given you each a separate day, and that would mean that the opportunity of your confirmation being voted on would be some time in February, or we could do it this way and hope that there is a possibility to get it done before we go out, and I didn't hear anybody object to doing it this way.

I thought I would give each of the Members of Congress a chance to make their introductions, and I know that literally every Member of Congress has another hearing or meeting and it might make sense if we went down through that way and have each group of Senators introduce their nominees.

In that regard, what we are going to do, and this will be somewhat unusual, is we will start with Fred I. Parker, of Burlington, VT, to be U.S. Circuit Judge for the second circuit. There will be two Vermont Senators introducing him.

I wonder, Senator Jeffords, if you and Judge Parker might want to just take your seats there.

## STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. I would note, regarding Judge Parker, when I recommended him to the President in June, I said at that time that there were 3 vacancies among the 13-member court, and I knew that we were going to have to fill those 3 vacancies. This is a court with a great deal of respect and I took my responsibility very, very strongly in whom I might recommend.

We talk about all the special qualities that a judge needs and the special temperament they have to have and the knowledge of the law, and all that is right, but I think it takes somebody with some time in a court watching good judges and bad judges to really know that you have to go beyond the paper and have to know the man or woman who is going to be nominated.

I have known Judge Parker for nearly 30 years. We were law students together at Georgetown Law School. He was one of the outstanding members of our graduating class. We had three of us who returned to Vermont after that class—he, myself, and former Judge Mahady, now deceased.

I know his attributes. I watched him there, when he served as deputy attorney general with then Attorney General James Jeffords, and did it in a fashion that nobody in that office had done before, instilling trust and respect among members of the bar, prosecution bar and defense bar, throughout the State.

He is recognized as one of Vermont's finest attorneys, and he has been in both civil practice, in government practice, and in criminal courts as defender and as prosecutor, State and Federal courts. I must say that when we went to the bipartisan selection committee, where Senator Jeffords nominated three people, I nominated three people, and the bar association three people, they came back and they rated Judge Parker as the highest and most qualified of all those seeking appointment for the second circuit.

When I look at who should be a judge, I ask is this somebody I would be willing to come before. Whether I was plaintiff or defendant, rich or poor, no matter what my political background, would I be willing to come before this judge and know I am going to get a fair trial? With Fred Parker, I would know that, and I think that every Vermonter intrinsically knows that.

This is not a case where we let partisanship reign. Judge Parker and I are very proud of our political allegiance to different parties. That is not the question. The question is who is going to be the best judge for the second circuit, who is going to be one who can follow the reputation that we have in Vermont, most recently with Judge Oakes, who is Chief Judge of the second circuit.

I would say, as I have told the President, that he is going to have somebody who will call cases as he sees them, most recently, in a case where he disagreed with President Clinton, and disagreed with him on a very significant matter, as his nomination was pending before the President for his consideration. It is to Judge Parker's praise that he called it as he saw it, but also I think that President Clinton should be praised that he looked at a good judge and went forward with the nomination.

With that, I would like to yield to my good friend and colleague from Vermont, Jim Jeffords.



[The prepared statement of Senator Leahy follows:]

PREPARED STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I am pleased to present to the Committee President Clinton's nomination for the United States Court of Appeals for the Second Circuit, Judge Fred I. Parker, Chief Judge of the United States District Court for the District of Vermont.

When I recommended Judge Parker to the President in June, I noted that there then existed three vacancies among the 13-member court. I am delighted that with the confirmation of Judge Parker, the President will have nominated and the Senate will have confirmed three outstanding appointments to fill the vacancies on this important court.

In this hearing room, we often speak about the special qualities a lawyer needs to fill a seat on the federal bench. We speak of legal acumen, we speak of experience in the law, we speak of judicial temperament. These are qualities only a select few lawyers possess. From my more than 20 years knowing Judge Parker, first as a fellow law student at Georgetown and then after we returned to Vermont, I know well that he has all of the attributes needed to be an outstanding judge, in the great tradition of the Vermont Bar and the Second Circuit.

Judge Parker has served with distinction since his confirmation by this Committee to the district court in 1990. Before his appointment, Judge Parker was recognized as among the Vermont Bar's finest attorneys. His legal career and life experiences have been broad and he brings the knowledge he has gained with him to the bench. Public service in the Vermont Attorney General's Office, a diverse civil and criminal practice in Vermont state and federal courts, an outstanding record at Georgetown Law School, have all helped prepare Judge Parker. It came as no surprise to me that the Vermont bipartisan nominating commission returned Judge Parker's name as best qualified to fill this important post.

In addition to his qualifications and background, Judge Parker possesses the quality essential to outstanding judges, the ability to be fair. No matter what the cause or whom the litigant, I have every confidence that Judge Parker will provide a fair and impartial hearing. Whether a petitioner is rich or poor, or a cause popular or not, Judge Parker will listen with an open mind and apply with law fairly in a manner that accords with the best traditions of Vermont common sense and justice.

If you look at the range of his opinions, you will see this to be true. For that reason above others, I am pleased that President Clinton made his nomination. Judge Parker is a man of integrity and independence—a judge who calls them as he sees them.

It is a commentary on both Judge Parker and the President that before the President had decided whether or not to nominate him, Judge Parker handed down *Frank v. United States*, an opinion in which he held the Brady law unconstitutional. He neither delayed his ruling nor altered its outcome for political purposes. This was not the work of a person who is angling for an appointment, but the act of a Judge fulfilling his responsibilities without regard to personal consequences.

He did what judges should do—he considered the case before him. Based on the record before him and legal precedent, he rendered his opinion. There are some who will not like the result that he reached, but no one should question his integrity in having ruled as he did.

Certainly there is no greater supporter of the Brady law than the President. Yet, President Clinton to his great credit has used no litmus test for this nomination. He proceeded to nominate this distinguished and qualified Vermont lawyer.

I am pleased to present to the Judiciary Committee the Honorable Judge Parker of the District of Vermont, President Clinton's nominee for the United States Court of Appeals for the Second Circuit.

Senator LEAHY. Senator Jeffords.

STATEMENT OF HON. JAMES M. JEFFORDS, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator JEFFORDS. Thank you, Mr. Chairman. You have adequately described the candidate that is here. My days go back to 1968 when I was elected to be the attorney general of the State of Vermont, and I was in a quandary as to whom to appoint as my deputy. I sought out advice from lawyers around the State, as I at that time was a relatively young attorney, having practiced law

just a very few years, and the unanimous choice was Fred I. Parker.

I asked him to come and meet with me, and it is the only time in my life that I have had an interview and hired somebody before I got through the interview. I was so impressed by this man and his intellect and his integrity that by the end of that brief meeting I had asked him to be my deputy attorney general.

I had the opportunity to be the attorney general at one of the most exciting times in the history of our State, and I also was young and naive and thought we could change the world and, with Fred Parker's help, we did. One of the first things I did was to sue the State of New York and the International Paper Co. in original jurisdiction in the U.S. Supreme Court, and put Fred Parker in charge, and we won.

Also, we had a very tough murder case. We had the toughest defense attorney in the State representing the client. I put Fred I. Parker in charge of that trial and we won. Everything I asked him to do he did with extreme capability, as well as my deputy in running and administering to my department. That was a very busy time when we were changing the laws of the State and changing Vermont for the future.

We ended up with, I think, three or four cases in the U.S. Supreme Court, which, for the little State of Vermont, was rather unusual. He didn't participate in all of them. Some of them came up after he left, but he helped prepare them, and I think we won in all of them.

So since that time, also, when it came time to have our district court judge replaced, I nominated Fred Parker to the President of the United States. I had to bring, however, the whole U.S. Senate to a halt and hold up judges all over the country because I had a difficult time convincing the administration that he was the best candidate, probably because I had nominated him.

But, anyway, he made it through. It took a while, but he proved to be to all of those in my State, and also to the members of the second circuit whom I have talked with, a leading, if not the leading, judge of the second circuit. He had tremendous accolades from Jim Oakes, hopefully his soon to be predecessor.

I also know his family well and have watched him and the incredible family he has—love, loyalty, and being together. He has not in any way shirked his responsibilities to his family, and I have watched his young sons grow and prosper with the kind of love and guidance they have had from their dad.

So, Mr. Chairman, there is no one that I know in the State of Vermont that I could be more enthusiastic about or recommend with better credentials than Fred I. Parker. Thank you.

Senator LEAHY. Well, thank you. I might also state for the record the reaction that I have had, and I am sure you have had, around the State from members of the bar and those who are not in the bar that has been universally positive on this recommendation.

I want to go to Senator Metzenbaum next, and Senator Specter. Jim, you are welcome to stay or not. I don't know what your schedule—I know you have got about three different things going, too.

Senator JEFFORDS. Yes, I do, and I will stay a while. I have a committee that I am supposed to be at, but I will be here for a while.

Senator LEAHY. Why don't you two gentlemen then step back, and I will go to Senator Metzenbaum, who wants to introduce his nominee.

Senator METZENBAUM. David Katz. David, would you come forward?

Senator LEAHY. Take a seat, Mr. Katz, please.

**STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S.  
SENATOR FROM THE STATE OF OHIO**

Senator METZENBAUM. Mr. Chairman, I am very pleased to join with my colleague, Senator Glenn, in having recommended David Katz to the President of the United States for the district court in the Northern District of Ohio.

I don't know of many people that I have met in my lifetime who have been more community-involved, more active, more concerned about the kind of world in which we live and the kind of community in which we live and who has paid his dues more than has David Katz.

He is an exemplary figure in his community. He is extremely well-respected. As a matter of fact, every president of the Toledo Bar Association that is living at this time has sent in a letter of recommendation. The attorney general of the State of Ohio has sent in a letter of recommendation. The Federal judge in the Northern District of Ohio who presides in Toledo has sent in a letter of recommendation. Across the board, there have been letters of recommendation, and I am very proud of the fact that Senator Glenn and I joined in recommending David Katz to the President and the President saw fit to nominate him.

Now, I think it would only be appropriate that I comment on the fact that the ABA, in their wisdom, or lack of wisdom, depending upon how one views it, has not given David Katz a favorable rating, but for only one reason, only one reason, and that is that he hasn't been a trial lawyer in recent years. But the lawyers who practice in Toledo are very happy to have him on the bench. The community is very happy to have him on the bench. The prosecuting attorneys and others in the area all speak well of him, but the ABA has a very unusual way of approaching these problems.

When it came time to consider the nomination of Thurgood Marshall to the circuit court of appeals, they saw fit to give Thurgood Marshall a negative recommendation, or rather turn down Thurgood Marshall. Obviously, the Senate went forward and confirmed him, and I think every American is proud of his record on the Supreme Court of the United States.

When Stephen Breyer was recently up for confirmation, they had another rule. The only problem they have found with David Katz' nomination is that he has not been a trial lawyer in the last 20 years. Well, a fellow by the name of Stephen Breyer—I think some would remember Stephen Breyer never tried a case in a courtroom in his entire lifetime, and if you can name somebody to the Supreme Court of the United States who has never been in a court-



room, I think it sort of causes us to look askance and question the position of the ABA.

I am very proud, Mr. Chairman, to have been a party, with John Glenn, to having brought about the situation where David Katz is before us here today as the nominee of the President of the United States, and I very, very strongly support him. I think he will make a magnificent jurist.

Senator LEAHY. Thank you very much.

Senator Glenn, we are glad to have you with us, too, sir. Please go ahead.

### STATEMENT OF HON. JOHN GLENN, A U.S. SENATOR FROM THE STATE OF OHIO

Senator GLENN. Thank you, Mr. Chairman, very much. Members of the committee, I much appreciate the opportunity to be here today to introduce David Katz. I also want to note the presence of his family here today. Dave is accompanied by his wife, Joan.

Joan, would you stand up?

[Mrs. Katz stood.]

Senator GLENN. Linda and Joel Beren are here; his daughter, Sarah; his daughter, Debra Intrater; Michael Katz, his son; and Sandra Ringer, his sister. I don't know who is minding the store in Toledo.

Senator LEAHY. I was going to say, is anybody left back in Ohio?

Senator GLENN. I don't know who is minding the store in Toledo, but obviously they are all very proud of this nomination.

Senator LEAHY. That is an average-sized town in Vermont. [Laughter.]

Senator GLENN. Making recommendations for the Federal bench is one of the most difficult and thankless jobs a U.S. Senator faces. We all know that for every recommendation, with few exceptions, we make one friend and a hundred enemies.

Dave is one of those rare exceptions. When his name was announced for the Federal bench, the legal community throughout Ohio applauded the decision. And whenever I visit or talk with people from Dave's hometown of Toledo, all I hear is praise about what a great recommendation we made in David Katz. And with good reason.

He has been in practice for over 36 years and earned a first-rate reputation for his in-depth knowledge of the law, his extraordinary abilities, and his thoughtful approach to the law. Dave is especially well respected for his work on complex civil matters, the very cases that are burdening the dockets in the Northern District of Ohio.

This morning, I was looking through some old letters recommending Dave for this judgeship. One came from an individual who had worked with Dave some 30 years ago and said that at that time he was impressed with young Dave's maturity. Well, let me assure you Dave is now quite mature, and mature maybe even beyond his years, and certainly eminently well qualified for the Federal bench.

As you can tell, I could go on and on about Dave, but I am not the one you want to hear from today. I want to offer my very highest recommendation of David and urge your favorable consideration of his candidacy. He will make a great judge.



Thank you, Mr. Chairman and members of the committee. I know you have a lot to get through.

Senator LEAHY. Thank you very much, Senator Glenn. I know you also have other committee commitments and I appreciate your being here.

I know Congresswoman Kaptur is here. You are here to speak for or against the nominee? [Laughter.]

Representative. Kaptur. Whatever will help. [Laughter.]

Senator LEAHY. Please go ahead.

### STATEMENT OF HON. MARCY KAPTUR, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Representative KAPTUR. Thank you, Mr. Chairman, so very much, and our esteemed Senator Metzenbaum, for giving a member of the House the opportunity to appear on behalf of both a friend and someone that I know will be the best Federal judge ever to pass through this committee, David Katz, of my home community.

Let me just say this is a truly historic occasion for those of us who have spent our lives in northwest Ohio. I know David personally, and his wife, Joan, their three children, their new grandchildren.

I think what is very interesting—and I don't know if anyone ever said this for the record, but I know that when David began as a young law student and went through law school and graduated, not all firms in our State, and I dare say our community, would have welcomed David Katz as a young practicing attorney in those days.

He is an outstanding American, an outstanding family man, an outstanding community leader who goes far beyond his own family in helping others. He is an outstanding graduate of Ohio State University, our great Buckeye university, and an attorney who has spent his life in the real world. As a partner in Spengler Nathanson in our own community, he has the respect of every single individual whom he has ever worked with.

I think what sets him apart from others who will come before you is that he understands the world of business, and we sorely need judges in our system who understand the way business operates, but he also understands people—a great compassion for people, and I think is the kind of experienced person who has the energy and the desire to serve our country and to serve our people.

So it is with great pleasure that I come before you today, and I thank you for allowing me to make this statement.

Senator LEAHY. Thank you very much, and I appreciate your being here. Mr. Katz and Representative Kaptur, thank you both.

Following the normal procedure that I have been told we follow in confirmation hearings, if there is a nominee who has sponsors from the committee, we go with them each in line. So, next, we would go with the one from Pennsylvania, Sean McLaughlin, and he is represented here, of course, by Senator Specter and Senator Wofford.

**STATEMENT OF HON. HARRIS WOFFORD, A U.S. SENATOR  
FROM THE STATE OF PENNSYLVANIA**

Senator WOFFORD. Senator Leahy, Senator Metzenbaum, Senator Specter, I am pleased to introduce to you today Sean McLaughlin, who has been nominated by the President for the Western District of Pennsylvania. With Sean today are his wife, Annie; his daughter, Catie; his parents, Mary Lou and John; his sister, Maura; and his brother, Matthew. Welcome to you all.

Senator Leahy, I would have been delighted, as Senator Jeffords was with Judge Parker, to have had the chance some day to have hired Sean McLaughlin in any of the previous ventures I have been in, but I had a better opportunity, which was to recommend him to the President of the United States to be a Federal district judge.

Sean is a son of Erie, where he was born and makes his home. He is no stranger to Washington, though. He completed both his undergraduate and law degrees at Georgetown, and even more importantly there he met and married Annie.

Following law school, he clerked for Judges Knox and Weber on the western district bench. He has focused his years of practice on civil litigation and has had a broad range of experience in the Federal trial and appellate courts. Over the past 7 years, he has become heavily involved in Federal civil rights litigation, including the Americans With Disabilities Act.

In addition to his practice, Sean has been an active member of the Erie County Bar Association, where he now sits on the executive board. He has been recognized for his service for the bar's legal aid program, and has contributed many hours of pro bono work for the Erie Housing Authority.

Those who know Sean and his work know that he is a respected and leading member of the Erie bar and the Erie community. They also know he is ready for this step to the Federal bench. I am confident he will be an outstanding judge and make great contributions to the western district bench.

Senator LEAHY. Thank you very much, Senator Wofford.  
Senator Specter.

**STATEMENT OF HON. ARLEN SPECTER, A U.S. SENATOR FROM  
THE STATE OF PENNSYLVANIA**

Senator SPECTER. Thank you, Mr. Chairman. In light of the many nominees on the list and so many of our colleagues who are waiting, I will be very brief. Not much needs to be said after Senator Wofford's introduction, but that doesn't customarily stop the second Senator speaking from going on at length.

Senator LEAHY. We have a tradition to uphold.

Senator SPECTER. We will try to combat that just a little today.

Senator Wofford has already itemized the nominee's pedigree, which is outstanding. I would note only two things; No. 1, his youth and vigor and energy, which I think are outstanding and will give him experience to work on the bench for some protracted period of time, and, second, the very strong recommendation which comes on his behalf from Bill Sennett, former attorney general of the Commonwealth of Pennsylvania, with whom I worked very closely when he was attorney general and I was district attorney of Philadelphia.

So if you will permit me, Mr. Chairman, I will save the other good things I have to say about Mr. McLaughlin when I hope to be present at his induction in Erie, and perhaps more importantly, likely unnecessarily, when the Judiciary Committee takes up his nomination to be sure he is approved.

Thank you very much, Mr. Chairman.

Senator LEAHY. Thank you very much, Senator Specter. I also understand you have got commitments in other committees, and I appreciate your being here.

I am glad to see Senator Inouye here, and Senator Akaka, and I understand you are here with Helen Gillmor. Chairman Inouye, we are delighted to have you here as one of the most senior and most respected members of the Senate. We are delighted to have you here, and also Senator Akaka, who we are so pleased came over from the other body to join us here in the Senate.

Please go ahead, sir.

#### **STATEMENT OF HON. DANIEL K. INOUE, A U.S. SENATOR FROM THE STATE OF HAWAII**

Senator INOUE. Thank you very much, Mr. Chairman. It is a great honor to appear before you and the members of this committee to introduce Ms. Helen Gillmor, who has just been nominated by President Clinton to serve as U.S. District Court Judge for the District of Hawaii.

Before proceeding with my statement, like all of my colleagues, I would like to present to you the family and cheering section of Ms. Gillmor: her husband, John Gillmor, and daughters, Reed and Jessica; I believe they are sitting in the back.

Senator LEAHY. We are glad to have you all here.

Senator INOUE. Mr. Chairman, Ms. Gillmor is presently engaged in private practice. She specializes in business law, civil litigation, and domestic law. From 1977 to 1985, she served as a judge of the State of Hawaii district court, handling criminal and civil cases, and on the State of Hawaii family court handling juvenile, criminal, and domestic matters.

She has also served as a deputy public defender, handling misdemeanor and felony trials, and also a clerk for the chief justice of the Hawaii Supreme Court. She has been an officer and a director of the Hawaii State Bar Association and has served on the disciplinary board of the Supreme Court of the State of Hawaii, which oversees the professional conduct of attorneys, and this has gone on for the last 20 years.

Judge Gillmor's experience in the practice law and on the State bench will serve her well in her new post, and I am fully confident that she will fulfill her responsibilities as a U.S. district judge with great distinction. Ms. Gillmor's appointment also represents a most historic milestone. If confirmed by the U.S. Senate, Ms. Gillmor will be the first woman appointed to the Federal bench in Hawaii.

Mr. Chairman and members, I respectfully request your favorable consideration of this nominee to serve as U.S. district court judge for the District of Hawaii.

Senator LEAHY. Thank you very much, Senator Inouye.

Senator Akaka.



**STATEMENT OF HON. DANIEL K. AKAKA, A U.S. SENATOR  
FROM THE STATE OF HAWAII**

Senator AKAKA. Mr. Chairman, it is with distinct pleasure that I join Senator Inouye in coming before the Senate Judiciary Committee to express my wholehearted support for the confirmation of Helen Gillmor as a U.S. district court judge for the District of Hawaii.

I wish to say aloha to Judge Gillmor's husband, John; their children, Reed and Jessica; Judge Linda Luke and her sister, Shirley Yuen; and Hawaii attorneys Paul Ganley, Ivan Lui Kwan, and Larry Okinaga.

My esteemed colleague has already touched on Judge Gillmor's legal education; her professional experience, which includes working in the legal trenches of Hawaii with her colleagues; and dedication to her community. Through numerous letters of recommendation to President Clinton in support of Judge Gillmor's appointment, her colleagues and friends portray her as a professional of the highest integrity whose dedication to public service is admired by all. The personal attributes and qualities most often cited are objectivity, integrity, energy, enthusiasm, and dedication.

Her legal career includes serving as a law clerk to Hawaii's chief justice, a deputy public defender, a per diem family court judge, and a private practice attorney. For the past 20 years, Judge Gillmor has distinguished herself as a member of the disciplinary board of the supreme court of the State of Hawaii, serving most recently as its chairperson.

Moreover, Helen Gillmor is an exemplary citizen, devoting time and energy to her family, community, and church. Her interests are diverse, ranging from the Samaritan Counseling Center, to the Friends of the Judiciary Museum of Hawaii, to serving as president of the Hawaii Ballet Theater.

Mr. Chairman, I encourage this committee to report Judge Gillmor's nomination favorably so that we may all act expeditiously to confirm her nomination.

Thank you very much, Mr. Chairman.

Senator LEAHY. Thank you very much.

Ms. Gillmor, you are fortunate to be here with two such distinguished Members of the Senate, and I thank you for being here. Thank you all.

Senator INOUE. Thank you, Mr. Chairman.

Senator LEAHY. I note Senator McCain is now with us. Perhaps, John, you might introduce the candidate, and I know Senator DeConcini is going to make a statement from here.

Senator DECONCINI. Let Senator McCain go ahead.

Senator LEAHY. Senator McCain, please go ahead.

Senator MCCAIN. I would be glad to defer.

Senator DECONCINI. No. Go ahead, John.

**STATEMENT OF HON. JOHN MCCAIN, A U.S. SENATOR FROM  
THE STATE OF ARIZONA**

Senator MCCAIN. Mr. Chairman, thank you for this opportunity. As a nonlawyer, to be amongst all these lawyers is certainly a great pleasure. I had planned on giving a brief speech on the com-



pling requirement for product liability reform, but we are here for a different reason.

Senator LEAHY. That is something to be grateful for. Go ahead.

Senator MCCAIN. I would like to thank my colleague, Senator DeConcini, for proposing Ms. Silver to this very important position. She is extremely well qualified. She has a broad and varied background in the legal profession, not the least of which what I would like to highlight, and that is in the area of being a member of the U.S. Attorney's office.

At a time when Americans are deeply concerned about crime in our streets, Ms. Silver has done an outstanding job. She has earned a reputation as one of the most diligent and hard-working members of our U.S. Attorney's office, and I am pleased and proud that she is going to be, I am sure, confirmed to a very important position.

Again, I would like to congratulate her and her family who are here—I am sure that Senator DeConcini will introduce them—and congratulate her personally on an outstanding career in the legal profession, and particularly as a servant of the people of this country and Arizona.

Thank you, Mr. Chairman.

Senator LEAHY. Thank you very much.

Senator DeConcini.

#### STATEMENT OF HON. DENNIS DeCONCINI, A U.S. SENATOR FROM THE STATE OF ARIZONA

Senator DeCONCINI. Mr. Chairman, thank you. Thank you, Senator McCain, for being able to schedule your return here and to introduce Roslyn Silver.

It is obviously a pleasure for me to see Roslyn Silver before this committee, Mr. Chairman. President Clinton is to be commended for nominating Ms. Silver to the U.S. District Court for the District of Arizona. Knowing her and her family and her career, I join my colleague, Senator McCain, in assuring this committee that this nominee is prepared for this position.

Roslyn is married to Steve Silver, who is a longtime friend of mine. His mother and father were friends of my parents and I worked for his mother many, many years ago, almost too many years to remember. I am pleased that he is here. Roslyn's mother, Ann Olson, is here; Jimmy Olson, her brother; Christine Frey, her sister; and Pauline Bartkowitz, her aunt.

If you would stand up, please, we would like to recognize you. I know it is a proud, proud day for all of you.

[The aforementioned persons stood.]

Senator DeCONCINI. Ms. Silver has a very distinguished legal career, as Senator McCain pointed out. She graduated from Arizona State University College of Law in 1971. If confirmed, she will have the distinction of being the first district court judge to have been a graduate of Arizona State Law School.

Following her graduation, she clerked for Arizona Supreme Court Justice Lorna Lockwood, who was the first female State supreme court chief justice in the United States, as a matter of fact. Prior to embarking on what has become a distinguished career in public sector, she practiced in the private sector. She practiced in a num-

ber of specialties, ranging from employment and labor law to working as counsel to the Navajo Nation.

From 1980 until 1984, Ms. Silver served with distinction as assistant U.S. attorney for the District of Arizona. For 2 years, beginning in 1984, she served as assistant attorney general for the State of Arizona. In 1987, she returned to the U.S. attorney's office and, beginning in 1989, she became chief of that office's criminal division, a position she continues to hold to this day.

Her employment history alone does not fully illustrate all this lady has to offer to the district court of the State of Arizona. In 1992, Attorney General Barr selected Roslyn Silver as one of only 20 nationwide recipients of the Director's Award for Outstanding Achievement on behalf of the U.S. Department of Justice. That same year, she was selected as Distinguished Public Lawyer of the year by the State Bar of Arizona and the Maricopa County Bar of Arizona, which, of course, is the Phoenix area.

In February 1993, Attorney General Reno recognized Ms. Silver's enormous contribution by presenting her with a special achievement award for outstanding achievements at the Department of Justice. In fact, at the time I recommended Ms. Silver to the President for the position, President Clinton had already approved her for the position of inspector general of the Department of the Interior. So she comes here well-versed and well-suited to take this position as U.S. district judge.

In short, Mr. Chairman, Roslyn Silver is uniquely qualified for the district court. She will be a tremendous addition to the District of Arizona. She possesses the insight and intelligence to handle the many varied areas of law she will encounter, and has the thoughtfulness and temperament which will ensure that she retains the humility necessary to sit on the bench. So I am deeply proud that we have an opportunity to confirm her before we adjourn this session.

Senator LEAHY. Thank you very much, and I must say, Ms. Silver, that Senator DeConcini and I began our association when we were both prosecutors. I can't speak for him, but I have always felt that was the most gratifying and satisfying job or position I have ever held so far in my life, was that of prosecutor. I think it is in many ways the most important one in the judicial process, or certainly one of the most important because you can make decisions not only to prosecute, but not to prosecute.

Senator McCain, when you talked about being a nonlawyer, it also jogged my memory that when I first ran for the Senate, a Vermonter came up to me and said she was going to vote for me because I was a prosecutor, not one of those damn lawyers we have got around here. [Laughter.]

Thank you very much.

Ms. SILVER. Thank you very much.

Senator LEAHY. Senator Dodd, I understand you have Mr. Alvin Thompson here with you, and I am delighted to have a couple of New Englanders. Mr. Thompson, I should mention that Senator Dodd's office is right next door to mine, so that he was making absolutely sure where I was today so that these hearings would go forward.

**STATEMENT OF HON. CHRISTOPHER J. DODD, A U.S. SENATOR  
FROM THE STATE OF CONNECTICUT**

Senator DODD. Thank you, Mr. Chairman and members of the committee. Let me begin by thanking you, Mr. Chairman, and Senator Biden and Senator Hatch. You have been very, very helpful in seeing to it that the President's nominee, Mr. Alvin Thompson, could be before the committee today for his hearing, in the hopes that before we adjourn this session of Congress his nomination can be acted upon favorably.

I am very honored to present Mr. Thompson to the committee, who I am confident will be a very valuable asset to the Federal judiciary in our State, and also a first-rate judge. Intellectual prowess, a commitment to the community, and a deep understanding of the law are his hallmarks as a candidate.

First of all, Mr. Chairman and members of the committee, I would like to introduce Alvin Thompson's family: his mother, Mrs. Parsons; his wife, Lesley Morgan Thompson; and his three lovely children, with whom I just had the pleasure of having lunch: Andrew, Catherine, and Julia. If they would all stand up, there they are in the back. They are here today with their father and son and husband for this wonderful occasion.

[The aforementioned persons stood.]

Senator DODD. Mr. Chairman, Alvin Thompson is the managing partner of Hartford, CT's firm of Robinson and Cole, one of Connecticut's leading law firm. Next year, that law firm will celebrate its 150th anniversary, making it one of the oldest law firms in the country, and certainly one of the oldest in the State.

He has overseen the firm's expansion in Boston, managed its 150 attorneys, and supervised its trial, environmental, employment, trust and estates, corporate, finance, real estate, and tax sections. Alvin Thompson was the first African-American to be a managing partner of a major Connecticut firm, and I can tell you today he is also the first African-American ever to be nominated to serve as a Federal district court judge in the State of Connecticut, and only the second in all of New England.

Despite his considerable professional responsibilities, Alvin Thompson has also found time for the community. In fact, a list of the organizations that he is associated with and assisted over the years reads like a who's who of Hartford, CT's philanthropic and social service community.

He is the chairman of the advisory committee for the Salvation Army's North End Corps, vice president of the Bushnell Park Foundation, a trustee of the Warburton Chapel, a member of Hartford Hospital's board of directors, a incorporator of the Hartford Seminary, a former board member of the Shelter for Women, a founding member of the Capital Area Foundation for Equal Justice, and the chairman of the Social Action Committee for the First Church of Christ, among others.

With the same verve that he has brought to serving the greater community of Hartford, Mr. Thompson has devoted himself to strengthening the legal profession. He is the cochair of the ad hoc committee on involvement of women and minorities for the American Bar Association's section on business law. In that capacity, he has been a strong and effective advocate for diversity in the bar.



He is also a member of the editorial board of *Business Law Today*. In addition, he has been an active member of the Connecticut and Hartford County Bar Associations, the National Bar Association, and the George W. Crawford Association.

Mr. Chairman, Mr. Thompson is an American success story. He grew up in the inner city of Baltimore. You just met his mother. His father died when Alvin was 2 years of age, and his mother, Mrs. Parsons, raised six children on her own. Despite those challenges, Alvin Thompson excelled academically and won a scholarship to a prestigious private high school in the Baltimore area, where he quickly became a star student. From there, he went on to Princeton University, where he earned his undergraduate degree in 1975, and went on to Yale Law School where he received his J.D. in 1978.

In fact, Mr. Chairman, talking with Mrs. Parsons earlier today in my office, I asked her how she managed to raise six children on her own in the inner city of Baltimore, and she didn't hesitate a second. She said two reasons, love and faith. I believe, more than any other advice anyone could receive, those are about the best road signs to follow.

After he completed Yale Law School, Alvin Thompson joined the law firm of Robinson and Cole, where he gained particular expertise in immigration, finance, and corporate law. He quickly—some would say meteorically—rose through the ranks of the firm to become a partner in 1985 and, as I mentioned at the outset, the managing partner of that law firm in 1991.

Mr. Chairman, Thurgood Marshall once said, and I quote him, "We must never forget that the only real source of power that we as judges can tap is the respect of the people," end of quote. Alvin Thompson, through his able legal work and devoted community service, has earned the respect of the people of my State, and that respect will only deepen if he is given the opportunity to serve on the Federal judiciary bench. I urge his favorable consideration by this committee.

Mr. Chairman, I should point out that my colleague, Senator Lieberman, has a statement which I would ask to be included in the record. Today is a Jewish holiday and, as you know, Senator Lieberman is an orthodox Jew and observes those holidays. So he regrets that he cannot be here. I know the scheduling problems you have had in trying to get these nominees before you, but he offers his enthusiastic support of this nomination as well.

I thank you for giving me a chance to appear before you.

Senator LEAHY. Thank you. I know of Senator Lieberman's support, also, and I also know his deeply held religious beliefs and practices and understand why he is not here, but I can assure you that he is a strong supporter. His statement will be included in the record.

[The prepared statement of Senator Lieberman follows:]

STATEMENT OF HON. JOSEPH I. LIEBERMAN, A U.S. SENATOR FROM THE STATE OF CONNECTICUT

Mr. Chairman, I am delighted to support the nomination of Alvin Thompson to the United States District Court for the District of Connecticut. He is a terrific choice.



A graduate of Princeton University and Yale Law School, Alvin Thompson is the managing partner of one of Connecticut's finest law firms. An accomplished and well-respected private practitioner since 1978, Alvin promises to bring to the court a sophisticated understanding of and expertise in complex finance and corporate legal matters. His diverse experiences as a lawyer working, to varying degrees, on securities, banking, finance and other commercial transactions, as well as immigration, real estate, and litigation matters, should serve him and the court well.

In addition to his demanding practice, Alvin has contributed tremendous energy and time to the Hartford community and beyond. As a law student, he began working as a legal assistance volunteer in New Haven; shortly after joining the bar, he began assisting the Volunteer Legal Aid and Public Defender Program in Hartford. Recently, he helped found the Capital Area Foundation for Equal Justice, Inc., a group created to help support Hartford's legal services organizations.

But Alvin's volunteer work has extended beyond providing traditional pro bono service to needy people. He is an active member of the First Church of Christ in Hartford, serving as the chair of its social action committee, that among other things serves meals at a local homeless shelter and collects food for distribution. He is the member of the Board of Directors of Center City Churches, an ecumenical agency serving the disadvantaged. Similarly, he has served as Chairman of the Salvation Army's Advisory Board for Greater Hartford: a board member and, from 1989-90, the President of the Board of the Shelter for Women, a residential treatment facility for adolescent girls; a board member of the Bushnell Park Foundation for which he has been working on developing a curriculum to use the Park to help enrich the education of innercity elementary school children; a trustee of Warburton Chapel which provides support to a variety of programs serving the disadvantaged; and a member of the Board of Directors of Hartford Hospital.

Additionally, since 1992, he has been an active and valued member of the George W. Crawford Association, serving as its Secretary and a member of its board. Similarly, he has been actively involved in the American Bar Association's Section on Business Law, working on its Committee on Developments in Business Financing and Commercial Financial Services Committee and co-chairing its Ad Hoc Committee on Involvement of Women and Minorities. He also serves as an editorial board member of *Business Law Today*.

Incredibly, I have only listed some of the activities to which Alvin has lent his time and expertise but I hope they give you a sense of the commitment and energy which has characterized his life to date. I know those characteristics must extend to his personal life as well, as he is married to a talented educator, Lesley Anne Morgan Thompson, and is the father of three elementary school-age children.

Alvin Thompson is clearly a man of great intellect, energy and heart. We need all three qualities in our judges, and I am very pleased to join Senator Dodd in recommending his confirmation.

Finally, I want to thank the Chairman and the other members of the Committee and staff for moving on this and Connecticut's other district court nominations so quickly after receiving them from the Justice Department. I know you are well aware that our 8-person court has been operating at less than full strength, currently with only four judges, for far too long. Thank you again.

Senator LEAHY. As I said, Senator Dodd is not only my neighbor, but one of the closest friends I have here in the Senate, so I paid particular attention to what he had to say. Thank you very much.

Senator DODD. Thank you very much, Mr. Chairman.

Senator LEAHY. I believe our last nominee is here with Senator Nunn, and that would be William Moore, of Savannah, GA.

#### STATEMENT OF HON. SAM NUNN, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator NUNN. Thank you, Mr. Chairman. I appreciate your taking time to have this hearing. I know the crunch in the schedule that you have toward the end, as we all do, and I am very grateful to you for taking the time to conduct this hearing and making sure that these important nominees have a good chance of being confirmed by the Senate before we adjourn this year.

Senator LEAHY. I had some extra time; I didn't have to go to Haiti.

Senator NUNN. It is my honor and pleasure to introduce to this committee William T. Moore, President Clinton's nominee to fill the vacancy on the U.S. District Court for the Southern District of Georgia. I will be calling him Willie Moore because I can't say "William." I have known him for a long time as "Willie."

Willie is what we call a lawyer's lawyer. He has practiced in Georgia as a private attorney and a Federal prosecutor for 30 years. Throughout his career, Willie has earned the respect and admiration of his colleagues for his professional ability, his judgment, and his personal integrity.

After graduating from the University of Georgia Law School in 1964, Willie worked in several Savannah law firms. In 1977, President Carter appointed him U.S. attorney for the Southern District of Georgia. I watched him very closely in his performance during that time, as did others in Georgia.

During his tenure as U.S. attorney, Willie demonstrated strong ability as an administrator and as a prosecutor. In fact, while he was U.S. attorney, Willie carried a caseload equal to that of any of his assistants and earned the distinction of winning all of the cases he personally tried.

At the end of his term, the Executive Office of U.S. Attorneys notified Willie that he had personally prosecuted more cases than any U.S. attorney in the country. So he was, without any doubt, an outstanding prosecutor and did an outstanding job.

Since leaving the U.S. attorney's office, Willie's legal practice has focused on defending both individuals and corporations who are the subjects of Federal grand jury investigations or have been charged with Federal offenses. Seventy percent of Willie's legal work has been at the Federal court level, with about 65 percent of his overall cases relating to criminal matters and about 35 percent relating to civil issues. In short, Willie comes before the committee with a keen understanding of the Federal court system as seen from the perspective of both prosecutors and defense attorneys.

Finally, Mr. Chairman, I would like to take just a few moments to comment on the breadth and depth of support for Willie in the south Georgia community. Both before and after President Clinton nominated him, I was contacted by dozens of Georgians, men and women, blacks and whites, Republicans and Democrats, all of whom attested to his ability, his integrity, and his judgment. I emphasize this because I believe that local communities need to know that when they turn to the Federal courts they are getting fair and impartial justice. The people of Georgia expect, and will receive, this kind of justice when they bring their cases to Willie Moore, assuming that he is recommended by this committee and confirmed by the Senate.

Mr. Chairman, I thank the committee for its time and attention, and I recommend Willie to the committee wholeheartedly, and to the Senate, without any reservation, as an outstanding lawyer and a nominee worthy of our trust and support.

He has a wonderful family. I believe his wife, Jane, is here today, and I don't know whether any of the children are here or not, but we are pleased to have her and we are very pleased to have Willie here today.

Senator LEAHY. Thank you very much, and I am delighted to have you here. Certainly, you come with very high praise from Senator Nunn, whom we all know very, very well, and know that he would not come with such praise unless he felt it was well deserved, and we respect that.

Thank you very much.

Senator NUNN. Thank you, Mr. Chairman.

Senator LEAHY. I believe we have had all the introducers, and so I would call Judge Parker back to the witness table.

Judge, if you would raise your right hand, do you solemnly swear the testimony you give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Judge PARKER. I do.

Senator LEAHY. Judge, I know that you are here and you are joined by the former Ms. Cain, and I wonder if you would introduce, so we will have it on the record, your wife.

### TESTIMONY OF FRED I. PARKER, BURLINGTON, VT, TO BE U.S. CIRCUIT JUDGE FOR THE SECOND CIRCUIT

Judge PARKER. Yes, Senator. My wife, Barbara Cain Parker, is with me, whom you know as Barbie, and she is going to stand up in a second, I think.

[Mrs. Parker stood.]

Judge PARKER. I am also joined here today and wanted to introduce a friend of mine from college, whom I actually roomed with in Washington when I went to law school, and that is Ralph Ditano, who is also in the audience.

Senator LEAHY. Mr. Ditano, it is good to have you here, too, sir.

Judge PARKER. In addition, I happened to run into a fellow, whom I am sure you know, from Vermont yesterday and who came here to give me support today, former Attorney General John Easton, former assistant secretary of the Department of Energy, who is also here in the audience.

Senator LEAHY. A good friend of both of ours. In fact, I had the honor on different confirmation hearings of introducing and supporting Mr. Easton for confirmation.

I know on a previous confirmation hearing for district judge, your two sons were able to join you here.

Judge PARKER. Yes. Both of my sons are in private school at this point. This thing was put together very hastily and so we didn't put that together this time. They were fortunate enough to have been here in the past.

Senator LEAHY. I just wanted to note them for the record. I have watched both of them grow up from the time they were infants to now—two sons both you and your wife can be very proud of.

Judge PARKER. Thank you, Senator.

Senator LEAHY. Judge, did you want to make any kind of an opening statement?

Judge PARKER. I only wanted to say that I am very honored to be here, Senator, and I very much appreciate the kind remarks that you and Senator Jeffords made on my behalf at the opening.



## QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Judge, if you are confirmed as an appellate judge, at some point you may be faced with applying a Supreme Court precedent, but you might not personally agree with the precedent. Would you consider yourself bound as a court of appeals judge by that precedent?

Judge PARKER. Yes, absolutely, Senator.

Senator LEAHY. Of course, you are going to have some cases where the Supreme Court hasn't ruled. Your own circuit may have ruled on it. What is the leeway in your mind that a judge of a circuit has in reviewing or going away from the precedents of his own circuit? This is assuming no Supreme Court decision controlling.

Judge PARKER. Yes. I think that a judge of the circuit is bound by prior precedent of the circuit, unless there happens to be some intervening statute or Supreme Court case, which you posit that there is not, and the only leeway whatsoever on that is to request or persuade others to sit en banc if there is some substantial reason to question the earlier precedent. But I think you are absolutely bound until the full court acts otherwise.

Senator LEAHY. When a court looks at the language of the law, a Federal court, and they don't feel the language of the law is absolutely clear, should they look also at legislative intent? What are the guidelines there?

Judge PARKER. As I understand the rules of statutory construction, if the language is clear, then the language of the statute is controlling. If it is in some way ambiguous, then one has to look further, and that is to look to legislative intent and discern as best one can what that is all about. It is sometimes very difficult to discern the intent of the legislature because there may be competing statements, but that is certainly a very important source of information to determine the intent of a statute which is in some way ambiguous.

Senator LEAHY. We have a problem throughout the country on the backlog of cases, one of the reasons more judges are being appointed, but with the new crime bill I suspect there will be even greater backlog, certainly in the criminal side, but there is also in the civil side.

I realize the court of appeals may be different, but at the trial level, and even into the court of appeals, how do you move things along? I mean, to what extent can a judge interpose himself or herself into the process to move litigation along?

Judge PARKER. Senator, I have had the good fortune of serving on one of those courts which is not yet overwhelmed, and so the situation has not been as dire as it is in a number of other districts. But we have had a rule in Vermont for some time that works well that requires the parties to adopt very early in the case, right after the filing of an answer, a discovery schedule which is designed to put all civil cases ready for trial within 8 months.

I have adopted a procedure where I hold a settlement conference in every single civil case prior to the time when it is scheduled for trial. I absolutely believe that parties are entitled to bring a case to trial if that is what they want to do, but most parties, the over-



whelming majority, desire settlement, and they desire judicial intervention in the process.

I have been very fortunate. It has been very effective. I actually invite the parties in, ask whether they would approve the assistance of the court, and then visit with individuals off the record, independent of one another, with each of their approval. It is often the case that a settlement is sitting there, but the parties can't talk to one another because of the negotiating posture that they have to maintain, and it is very, very effective. I think that is one sound approach.

We are also moving into early neutral evaluation in the district court in Vermont as a part of the Civil Justice Reform Act work that we did, and I am pretty—

Senator LEAHY. You were on the advisory committee of that, were you not?

Judge PARKER. Yes, I was. I attended all of those meetings, except those where we invited members of the bar to come in and comment, because I felt that would be perhaps chilling to their ability to do so. But the early neutral evaluation program is designed to try and advance that process of disposition by settlement in order to hopefully save the litigants the huge expense that goes on in preparing for trial. I am pretty excited about that program. We will see how it works.

Senator LEAHY. The Federal sentencing guidelines are one last subject I want to talk about. One district judge resigned because, according to press accounts, he just felt he couldn't follow the Federal sentencing guidelines in criminal cases. Your colleague in Vermont has been extremely critical on occasion of the Federal guidelines and of laws that Congress has passed setting minimum mandates. What are your feelings on that, Judge?

Judge PARKER. I think it is important to keep separate the concepts of the guidelines versus the mandatory minimums. I never sat as a judge prior to guidelines, and that may affect my views, but I have found the guidelines actually—I simply don't have the reservations about the guidelines that many of my colleagues do. In fact, I think the guidelines are designed to compel one to look at those factors in sentencing which ought to be looked at with or without guidelines, and they lead you to a principled place.

Then if the guidelines end up with a result that seems unsound, you can examine departure, either upward or downward, and if there is a justifiable reason, the second circuit has certainly endorsed the concept of departure. So I think that works. The tough ones are the ones where the mandatory minimums then come in and push you way above, in most instances, what the guideline range is, and so then you have the very difficult situation of thinking that the result does not look just. But that, of course, is the law and one follows the law as a judge.

I think there are some harshnesses that hopefully will be alleviated to some extent with the new crime bill. I haven't read those provisions, but I have read about them and I hope there is some relief there.

Senator LEAHY. I do, too. I am a little bit worried about it, but I do, too.

Senator Pressler, did you have any questions?

## QUESTIONING BY SENATOR PRESSLER

Senator PRESSLER. Yes. Thank you very much, Mr. Chairman.

There are a number of problems, I believe, with the exclusionary rule as it is currently applied. Some feel it is ineffective. Others feel it imposes excessive costs on the criminal justice system and society by freeing the guilty, while not helping the innocent. The penalty of completely excluding otherwise proper and relevant evidence bears no proportion to the abuse it seeks to prevent. The penalty is the same regardless of whether a police officer's improper conduct is unintentional or not, whether it is minor or flagrant.

As you know, in 1984, the Supreme Court modified the exclusionary rule in *United States v. Leon* to permit the introduction of evidence obtained in reasonable, good-faith reliance on a search warrant that later proved defective. Also, the fifth and eleventh circuits have adopted a good-faith exception for warrantless searches.

What are your views on the issue? Do you take an expansive or restrictive view of the Federal exclusionary rule? Do you favor a broader good-faith exception to the rule than current law allows?

I have some other questions here. I will just read them all, so maybe you can bundle all of this in one answer.

What do you think of a proposal made last Congress which would have overturned *Leon* and the fifth circuit exception by modifying the exclusionary rule so as to admit evidence obtained with a defective warrant only if the officers requesting the warrant and the issuing magistrate can be proven to be detached and neutral?

Judge PARKER. Senator, in terms of my thoughts, I suppose the major thought that I have is that the Supreme Court has spoken on this issue and that I as a judge am bound by those Supreme Court rulings. As I understand the workings of *Miranda*, they are tied to a Supreme Court interpretation of the fifth amendment, and so that is in place as the law and that is what I would be bound to follow.

Senator PRESSLER. But as a Federal judge, you can take an expansive or a restrictive view of this issue. Particularly in the area of the exclusionary rule, you will have leeway to take what I define as an expansive or restrictive view—how would you define your approach?

Judge PARKER. I am sorry to say, Senator, that I am not sure that I really understand the kind of latitude to exist that you describe. I sit on suppression hearings all the time. I think it is one of the very tough jobs of a district court judge because you have got some difficult choices to make about who is telling the truth.

There is the story of the officer on the one side and the story of the defendant on the other side, and you have to try and call those as best you can as to what the story is. But once those facts are resolved, I don't think there is room to be either expansive or non-expansive because the Supreme Court has defined that area in its decisions and I follow that.

Senator PRESSLER. Congress recently passed legislation that provides for the imposition of the death penalty for a number of Federal capital offenses. Do you feel the death penalty constitutes one of the cruel and unusual punishments proscribed by the eighth

amendment, and is there any reason why you could not, in good conscience, vote to uphold the death penalty if the facts of the case warrant its imposition?

Judge PARKER. Well, Senator, once again I go to Supreme Court precedent. I think the issue of whether or not the death penalty constitutes cruel and unusual punishment has been addressed by the Supreme Court and resolved, and that is a precedent that I would follow. With regard to your second question, there is no reason why I could not follow the law in that regard.

Senator PRESSLER. Each year, thousands and thousands of petitions of habeas corpus are filed, clogging the Federal district court dockets. For example, in 1992 inmates filed a total of 49,000 civil suits, including habeas petitions, against the Government in Federal court. The same year, a total of 48,000 criminal cases were brought by the Government in Federal courts. This means that in 1992, inmates filed 1,400 more cases against the Government than the Government brought against wrongdoers, which is amazing.

Most habeas petitions are totally without merit. Prisoners seem to file them as a form of occupational therapy. Other prisoners, such as those on death row, file successive petitions simply to delay the imposition of their sentence. Forty percent of all habeas petitions are filed more than 5 years after the petitioner was convicted. Almost one-third of all petitions are filed more than a decade after a conviction.

The lack of finality in our criminal justice system imposes high costs, both economic and societal, on all of us. Public confidence in the system has been seriously undermined as a result. Victims and their families are unable to put their lives back together as litigation drags on and on. The resources of the Federal courts and prosecutors are strained to the breaking point.

Do you agree that there is a need for habeas corpus reform, and what are your thoughts on a proposal to abolish the requirement that persons convicted of capital crimes exhaust all available State remedies before petitioning in Federal court for a writ of habeas corpus. Also, what do you think of time limits requiring Federal district and circuit courts to act on habeas petitions within a specific period of time?

Judge PARKER. Senator, I am going to try and keep all of those questions in mind.

Senator PRESSLER. I am sorry. I will go back and repeat them if you would like.

Judge PARKER. I think the area of limitation on the great writ has been recently addressed by the U.S. Supreme Court and some limits have arisen. I recognize what you say. There is a tension between the fact that there are a tremendous number of writs that don't have merits that are filed and there is a real issue of finality.

On the other hand, every now and then there is a writ that has merit and needs to be addressed, and trying to resolve those tensions, I think, is a real tough one. You wouldn't want to ignore or not be able to provide relief in that case when it is deserved, but I agree with you. There is a tremendous amount of work and effort that goes into meritless applications.

You asked about State court exhaustion. I guess that is the one I didn't quite address.



Senator PRESSLER. OK. What are your thoughts on a proposal to abolish the requirement that persons convicted of capital crimes exhaust all available State remedies before petitioning in Federal court for a writ of habeas corpus?

Judge PARKER. I am not sure what the basis of such a proposal would be. I mean, it seems to me it is very important that the exhaustion requirement continue because the State courts are the ones who ought to address first whether or not their courts were in error in some way or violated a right.

Senator PRESSLER. Now, what is your view of the Racial Justice Act? When implementing the death penalty, do you believe it is appropriate to consider factors such as race which are unrelated to the unique facts of a given case?

Judge PARKER. You know, Senator—

Senator LEAHY. I would note for the record the Racial Justice Act did not pass, so we are talking basically a moot point here.

Senator PRESSLER. Well, the proposal was made. It may come up again.

Senator LEAHY. Yes, but I wouldn't want the judge to think he was responding to something that was a matter of law. The Racial Justice Act did not pass.

Senator PRESSLER. That is true, yes. I think we are all aware of that.

Judge PARKER. Senator, I was going to respond by saying I am not familiar with the act, so I just don't—

Senator LEAHY. There isn't one. That's why.

Senator PRESSLER. Well, then let's move on. When implementing the death penalty, do you believe it is appropriate to consider factors such as race which are unrelated to the unique facts of a given case?

Judge PARKER. On that, all I can say, Senator, is I have not ever had a death penalty case and I am not familiar with the area of law and what factors are appropriate. I would in such an instance familiarize myself with the law and follow it.

Senator PRESSLER. Are you committed to following all Supreme Court precedents faithfully and giving them full force even if you personally disagree with some of them?

Judge PARKER. Yes, absolutely.

Senator PRESSLER. What will you do if what the Constitution and laws require conflicts with what you think the law ought to be?

Judge PARKER. Well, as a judge, I don't think what I think the law ought to be ought to have anything to do with it. I must follow the law. That is what I am sworn to do as a judge. I suppose if there were some matter of conscience that was very troublesome, then one might recuse, but I just don't see that—

Senator PRESSLER. Now, on some occasions you will be faced with cases of first impression. What principles will guide you or what methods will you employ in deciding cases of first impression?

Judge PARKER. Normally, Senator, when one is in that position there is a line of precedent that goes along either side of whatever factual situation you have, and sometimes it makes sense when you try to apply either of those lines of precedent to the facts that one should be chosen and slightly modified as the place where you should be.



If that is not the case, then, of course, if it is first impression with a statute, you go to the language of the statute and then to the legislative history. And if it is a case of first impression not statutory, then I think one has to do research into the legal principles that show up in other cases in order to determine what those principles are and to apply them to the facts of the case.

Senator PRESSLER. Thank you.

Senator LEAHY. That is all the questions we have for Judge Parker.

We will take a 5-minute recess and then take the other nominees as a panel.

[Recess.]

Senator LEAHY. Would you all please rise and raise your right hands? Do you, each and every one, solemnly swear that the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Ms. GILLMOR. I do.

Mr. KATZ. I do.

Mr. McLAUGHLIN. I do.

Mr. MOORE. I do.

Ms. SILVER. I do.

Mr. THOMPSON. I do.

Senator LEAHY. Let the record note that each of the nominees answered in the affirmative.

I will begin, Ms. Gillmor, with you. Again, I would note to the panel this is an unusual way of doing it, and we are doing it this way for your advantage, as I am sure you realize.

Now, Ms. Gillmor, earlier did you indicate for the record if there were family members or friends here?

#### **TESTIMONY OF HELEN W. GILLMOR, HONOLULU, HI, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF HAWAII**

Ms. GILLMOR. Yes. My husband, John, my law partner and husband, is here. My daughter, Reed, who I will note for your benefit, Senator Leahy, is a junior at the University of Vermont, is here. [Laughter.]

Senator LEAHY. You are doing OK anyway. You don't have to go that far. [Laughter.]

Ms. GILLMOR. And my daughter, Jessica. In addition, a number of my colleagues and friends from Hawaii are here. Judge Linda Luke, attorneys Ivan Luis Kwan, Paul Ganley, and Lawrence Okinaga, friend Shirley Yuen, Tom and Jenny Waracka are also here, and I hope I haven't forgotten anyone. Also here are two friends from law school who live in the District, Fred Schwartz and Richard Steinkamp.

#### **QUESTIONING BY SENATOR LEAHY**

Senator LEAHY. Thank you. Afterwards, the staff will want to get from you the exact spellings of all these names for the record. This record, you will have a copy of and it is nice some day to be able to look back and see who was here.

I must admit your daughter probably finds winter months in Vermont somewhat different than winter months in Hawaii, but I am delighted she is there. I think it is a wonderful school. My

daughter just graduated from there this spring and I have a son who is now in his last year at the university, and another son who is a lawyer and did his undergraduate work there.

Now, your questionnaire shows you have served as a deputy public defender. You were a State court judge, and now a partner whose practice involves civil litigation, if I have got this right. How do you see this as preparing you for the district court?

I say that because in the district court you are going to find, like most district courts, that the docket comes up with more and more criminal cases, as opposed to civil cases, everything from drug trafficking to Federal civil rights violations, and so on. What do you feel you have in your preparation for this position?

Ms. GILLMOR. Well, Senator, I have not practiced criminal law for 10 years. I must be honest about that, but I was a public defender for 2 years, and in the 8 years that I served in the State court I was involved in criminal cases. I will have to go back and get up to speed in terms of the current criminal law and, in particular, of course, the Federal criminal law, but the Federal Judicial Center has already sent me some wonderful materials and they make available audio tapes and other judging skills through mentoring programs and through judge's school, and I am looking forward to taking advantage of all of those opportunities.

Senator LEAHY. Were you able to find out from them that this is not an unusual situation, that there are judicial nominees who come forward who have had their most recent experience extensively in the civil side and need these kinds of refreshers on Federal criminal law?

Ms. GILLMOR. Yes, I believe so. I believe that I am lucky in that my practice over the years has included both criminal law in the past and civil law, and I think that is a benefit in terms of being able to get up to speed on all of those areas.

Senator LEAHY. Has that also included jury trials?

Ms. GILLMOR. I did do jury trials as a criminal attorney, but I don't know—fortunately or unfortunately, all of my jury trials have always settled, sometimes on the courthouse steps, but they have settled.

Senator LEAHY. But you have had to go through the preparation for them to the extent that you could make a recommendation to your clients regarding what was a fair settlement?

Ms. GILLMOR. Oh, yes.

Senator LEAHY. If you were faced with a ninth circuit precedent that controlled a matter before you but with which you personally disagreed, what controls, the precedent or your personal feelings?

Ms. GILLMOR. The precedent controls.

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. I will come back, but I want to go down through the list and then yield.

Mr. Katz, a somewhat similar question. Your practice has been a hundred percent civil litigation. How do you plan to familiarize yourself on matters involving criminal jurisdiction?

**TESTIMONY OF DAVID A. KATZ, TOLEDO, OH, TO BE U.S.  
DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO**

Mr. KATZ. Mr. Chairman, I have been most fortunate. Since June 1993 when I met with the clerk of the Northern District of Ohio, I have been given from the Federal Judicial Center materials. Those materials have been both written and videotape, and I have reviewed them several times. Within a month of the nomination, which incidentally occurred on the date of my oldest granddaughter's 11th birthday, I received a box of materials with both videotape and written and have been working my way through that.

I am also aware that during—I have been made aware by the FJC that during the first year of a judge's career, approximately 100 hours of educational opportunity are given to that judge, which is the equivalent of two one-semester courses in law school. So I believe, as a career-long studier and believer in continuing legal education, that the education has begun but will need much more in-depth continuation, and I intend to do that.

Senator LEAHY. Mr. Katz, do you have any question in your mind that if the sixth circuit has a clear precedent in a matter, even though you may personally disagree with it, that you are required to follow that sixth circuit precedent?

Mr. KATZ. None whatsoever.

Senator LEAHY. As you know, the ABA is going to later testify and question your qualifications for the bench based on lack of experience. Obviously, after they have testified, the record will be open for you to respond in any way you wish, but do you wish to give any response to the testimony that may well understand the ABA is going to give?

Mr. KATZ. Yes, Mr. Chairman. Thank you. I want to first say I want to thank you for the opportunity to respond. The ABA Standing Committee on Federal Judiciary obviously is a very prestigious committee and has a role to play. Every process of committees of that type has its flaws. Obviously, I believe that this process in which I was involved is flawed and I do not agree with their result.

My background of 37 years within the legal practice has been broad and deep in various areas of the law, some of them extremely sophisticated and complex within the business, tax, securities, and related fields. To do that kind of practice, one must continue to have educational opportunities and take advantage of them.

I also believe that my development as a lawyer, which has included the opportunity to do many arbitrations—I am recognized as fair and equitable. I believe that I would bring to the bench, if permitted to do so by this committee and the Senate, a balanced background and understanding of the law, a work ethic, and the respect of litigants and lawyers within the community.

Without being overly long in my response, I believe that in this instance my background, what I would bring to a Federal judgeship, the ability to be fair, the ability to be reasoned in an approach, my reputation in the community, and my experience, militate against the finding of the ABA, and if given the opportunity to do so, I believe I would make a fine judge for this system.



Senator LEAHY. Now, Mr. Katz, also we should note for the record you have members of your family or friends here, do you not?

Mr. KATZ. Yes, I do. I have my wife, Joan, the star of our family's crown. We are accompanied by our three children. My oldest daughter, Linda Beren, and her husband, Joel, are here. Their daughter, one of three, Sarah, who is 11 and was 11 on the date of my nomination, is with us. She left behind a sister, Stephanie, and her brother, Joshua.

My son, Michael, who is a member of our law firm, has three children, the most recent of which was born 2 weeks ago today, and his wife Robin justifiably and understandably can't be with us. My younger daughter, Debra, is here—Debra Intrater. Her husband, Neil, has to stay home; someone has to take care of their two children, 2½ and 1.

My sister, Sandra Ringer, is here. One of my law partners, Theodore Rowen, is here. He is more than a partner; he is one of my dearest friends and a graduate of the University of Vermont. [Laughter.]

And in this instance, maybe I do need that. [Laughter.]

He is seated with a lifelong friend, Joel Levine, who is here representing his late father, Abe Levine, who was like a father to me, and his brother, Gordon, who have been lifelong friends of our family, and especially me.

We have—a very dear friend of ours going back to undergraduate days who lives in the area, David Foreman, is with us, and a very dear friend of our family, Stephen Erd, who works for an Ohio legislator here in the House, and finally, Mr. Chairman, two of the daughters of the most recent nominee and confirmed and installed judge in the northern district, western division, Judge James Carr, his daughters, Maureen and Megan.

Other than that, we are taking over the town.

Senator LEAHY. You have a superb memory just to remember everybody who is here, and I might say that is more people than the town that Judge Parker was living in up to just a couple of years ago when he moved into metropolitan Burlington, our largest city, which has 38,000 people, and we like it that way. [Laughter.]

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Mr. McLaughlin, you served as a clerk to U.S. District Judge William Know, I believe—is that correct—in the Western District of Pennsylvania?

#### TESTIMONY OF SEAN J. McLAUGHLIN, ERIE, PA, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Mr. McLAUGHLIN. That is correct, Senator.

Senator LEAHY. And then you have been many years a civil litigator. How do you feel those two positions come together, or do they come together, in forming your abilities to be on the Federal bench?

Mr. McLAUGHLIN. Well, Senator, of course, as a Federal law clerk I had a unique opportunity to observe the inner workings of the court and how the court functioned on a day-in and day-out



basis. We had during my tenure as a Federal law clerk, of course, a significant diet of civil and criminal work.

Since I completed my Federal clerkship and got into private practice, my years in private practice have been heavily involved from the outset in a wide variety of litigation-related matters, and I just feel that the two together provide a useful background because they both gave me valuable both practical and other types of experience in the litigation context.

Senator LEAHY. You are going to be presiding over cases on the Federal bench including drug trafficking, major Federal civil rights violations, constitutional issues. Do you feel that the tools available for you to come up to date on that would be adequate?

Mr. McLAUGHLIN. I do, Senator. With respect to the civil side of the fence, in my private practice I have had considerable litigation experience in Federal constitutional issues, particularly issues involving cases and claims arising under Section 1983 of the Civil Rights Act, and that goes back several years. So I feel I have a solid background in civil Federal constitutional law.

With respect to the criminal side, I think I would echo some of the statements made by my colleagues to the effect that I have received the same material from the Federal Judicial Center. I am in the process of trying to get through it right now. I have recently attended within the last few weeks a seminar back in my hometown on criminal substantive and procedural law, and I can represent to the committee that it is my firm intention to continue to come up to speed on the criminal aspect and I fully expect that I will do so.

Senator LEAHY. As you know, there has been a lot of controversy over the role of arbitration in the Federal courts, some saying it is a great idea, others, like the American Board of Trial Advocates, objecting to some of the proposals.

One of the big issues we have, and the courts in your jurisdiction will be no exception to this, is what do you do with court backlogs. Do you have any feelings on the role of arbitration in Federal courts?

Mr. McLAUGHLIN. Senator, I think that arbitration is possibly one of many potential tools to lessen the burden in Federal court. Up in my jurisdiction, there is an arbitration program that has recently been implemented which is voluntary and it seems to be working fairly well. I think that arbitration, along with other factors, could very well be a meaningful approach to the court backlog problem.

Senator LEAHY. The usual question: In your case, in the third circuit, you have a third circuit precedent and you may personally disagree with it, but it controls the matter; it is on all fours. What do you do?

Mr. McLAUGHLIN. Well, Senator, in that case you are absolutely bound by your circuit precedent.

Senator LEAHY. And you also have family members here, I understand.

Mr. McLAUGHLIN. Yes, I do. I have a number of family members and I have some friends, if I could introduce them very quickly.

Senator LEAHY. Would you?

Mr. McLAUGHLIN. My parents, John and Mary Lou McLaughlin, are seated over my left shoulder. My wife, Annie, and I believe my 8-year-old, Catie, has returned after falling asleep briefly.

Senator LEAHY. I do that to people all the time, sweetie, so don't you worry. [Laughter.]

Mr. McLAUGHLIN. My sister, Maura, is also present; my brother, Matthew; and two very close friends from college whom I was happy to see appear here today, Timothy Naughton and Ken Wren.

Senator LEAHY. It is good to have you all here and, as I said, I wanted to make sure that was there so we would have it on the record.

Mr. McLAUGHLIN. Thank you, Senator.

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Mr. Moore, you have been a pretty active litigator. I was looking over your record. Incidentally, I meant to mention earlier I have had some experience with the bar in your State. My son went to Emory Law School and I went down at different times and watched everything from moot court arguments on through.

You have appeared before a number of judges. We hear the sense of judicial temperament; everybody says a judge has to have judicial temperament. In some ways, I guess, for one who spends a lot of time in a court, you know it when you see it, but what are some of the elements of judicial temperament that stand out most in your mind?

#### TESTIMONY OF WILLIAM T. MOORE, JR., SAVANNAH, GA, TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF GEORGIA

Mr. MOORE. Mr. Chairman, the judicial temperament that stands out most in my mind is a judge who is willing to listen before he leaps, is one of the most important things, a judge who is willing to listen to both sides of the argument attentively, to be courteous to the litigants, to be courteous to the attorneys that appear before the judge.

If a judge conducts himself in that manner by being courteous, by listening to both sides of the argument before he makes a quick, hasty decision, then I believe that his temperament will come through, and it will come through effectively as far as that case is concerned.

Senator LEAHY. One question that has come up and is coming up more often now is the use of secrecy orders in Federal courts. One court of appeals judge says that there is an excess of court secrecy in civil litigation, and it presents a serious problem for the health and safety of the American public. We have had proposals, actually, to restrict the use of secrecy orders in settlements, for example.

How do you feel about this? You have two litigants; they will settle, but they want a secrecy order. You are the judge and you are looking at this. A manufacturer is sued and he wants a secrecy order, and you are thinking the item that was involved in the litigation—there may be thousands and thousands of other people within the jurisdiction that have similar items. Are these things

that you take into consideration on such a request? What would you think of?

Mr. MOORE. Well, Mr. Chairman, most of my experience on secrecy orders by district court judges and magistrates has been in the criminal area where you would have secrecy, in camera proceedings and under-seal orders, to protect informants, for example, and that sort of thing.

I have had some experience in civil matters, and particularly one civil antitrust case where there was a sealed order by the court. Sometimes, if the court is willing to seal the settlement order, then the litigants will settle the case, where they otherwise would not have perhaps been willing to settle the case had the court not agreed to seal it, with the request of both parties.

In those cases where public interest is concerned, though, where public safety and public knowledge of a defective product, for example, might be the issue, as a district court judge I would have to think long and hard and I would, I guess, have to be convinced by the litigants that there was some overriding reason over and above the public policy that that order should be sealed. Otherwise, I probably would not.

Senator LEAHY. So you are saying that just because you have the two litigants saying, look, we are willing to settle this thing, but it has got to be sealed, that as a judge you would take an affirmative step to look at why and then still make up your own mind. Simply because they want it doesn't mean they get it?

Mr. MOORE. That is correct, sir.

Senator LEAHY. Of course, the traditional question: In your case, the eleventh circuit precedent is controlling and you disagree with the precedent. What do you do?

Mr. MOORE. Follow the precedent, Mr. Chairman.

Senator LEAHY. Mr. Moore, I think we have done this before, but I want to make sure we have it in the record. You have family and friends here, do you not?

Mr. MOORE. Yes, Mr. Chairman. With your permission, I would like to recognize a few people who are here with me in spirit, but not in fact.

Senator LEAHY. Go right ahead.

Mr. MOORE. My mother, Mary, had a fall at home a couple of months ago and she is unable to travel, although she is doing well again.

Senator LEAHY. Well, you send her our best.

Mr. MOORE. My oldest daughter, Sarah Evans—she and her husband, Ben, are in Douglas, GA, where they are desperately scrambling to get his new cotton gin in operation in order to gin all the cotton that is coming in out of the fields.

Senator LEAHY. I understand.

Mr. MOORE. You have heard that old story about them cotton balls get rotten.

Senator LEAHY. Another hat I wear is as chairman of the Senate Agriculture Committee, and I understand this very well. [Laughter.]

Mr. MOORE. My youngest daughter, Mary, is in Savannah working for the bank and is not present today, and her twin brother,



my only son, Ted, is finishing his last quarter at the University of Georgia as we speak, and so he is not here today.

All three of my children, when Ted graduates, will be graduates from the University of Georgia, but I want you to know that we have great respect for the University of Vermont. [Laughter.]

Senator LEAHY. One of my sons did graduate work in Georgia, even though it was at Emory.

Mr. MOORE. Finally, my wife, Jane, is here, and Jane has been an inspiration to me and my children throughout our marriage and she is here with me today, and my good friend from Savannah, Ed Feiler, is here today, and I would like for them to stand.

Senator LEAHY. Please do.

[The aforementioned persons stood.]

Senator LEAHY. Thank you. It is good to have you here.

Mr. MOORE. Thank you, Mr. Chairman.

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Ms. Silver, let me ask you the ninth circuit question. The precedent controls; you don't like it, you have personal feelings against it. What happens?

#### TESTIMONY OF ROSLYN SILVER, PHOENIX, AZ, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF ARIZONA

Ms. SILVER. I comply with the precedent, unequivocally.

Senator LEAHY. Now, I recall in my days as a prosecutor that you are in there very much as a partisan for the Government, obviously respecting the rights of all, but you are an advocate, and an advocate basically for the same client all the time. Do you feel you would have any difficulty, especially in a criminal case, moving from that to becoming an impartial arbiter?

Ms. SILVER. Mr. Chairman, I have been a strong advocate for my client, the U.S. Government, for now 14 years, and also a strong advocate for the attorney general of the State of Arizona. But I have also been a strong advocate for all of my clients, those clients which preceded the Government clients in private practice, because I feel it was my responsibility as a litigator to represent all of my clients well.

In representing my clients, it has always been my method and means of representation in a fiercely advocacy way to be well-grounded in the law, and that is the way I have approached my practice as a prosecutor, is to know the law and know it well and argue it well. I think that will inure to my benefit as a judge, should I be confirmed.

Second, and probably more importantly, I think a prosecutor, if a prosecutor is to be responsible prosecutor, must recognize that she has very grave responsibilities and awesome responsibilities that require her to exercise impartiality and neutrality every day, because of the tremendous discretion a prosecutor has, in order to seek justice, to find justice, and to do justice.

I believe, in the 14 years that I have been a prosecutor, that I have, in fact, complied with those principles, and I think again that that will help me as a judge if I should be confirmed by this committee.



Senator LEAHY. In some ways, I think it would be safe to say the prosecutor has the most discretion of anybody in the judicial system because you have got the discretion to withhold prosecution as well as bring it.

Ms. SILVER. That is correct.

Senator LEAHY. And if you decide to bring it, in most cases you have a range of charges that could be brought basically for the same case, ranging in severity. I mean, I have often felt that this is an extraordinarily powerful position. We always focus on the judges, but the prosecutors have an enormous amount of power.

I might say the flip of what I asked some of the others on this panel who have been involved heavily in civil litigation and how do they cover the criminal docket. Do you have any qualms about working in the civil docket?

Ms. SILVER. I do not. I was a civil practitioner for 10 years. It has been a while. I am going to have to come up to the mark. I think I have some mentors who are available for me. The colleagues on the bench have generously offered to assist me in any way. The Federal Judicial College [sic]—I intend to take advantage of all the opportunities with the Federal Judicial College.

I have two attorneys who I have been working with now whom I consider to be very strong civil litigators. They have already lent me some very good treatises which I have been pouring over for the last two weeks in anticipation of my confirmation. And, serendipitously, as the chairman and the committee may well know, because I have been an assistant U.S. attorney for now 14 years, I will be conflicted from handling many criminal cases, so I will be able to devote full time to reviewing and catching up in the civil area.

Senator LEAHY. You are also a member of the Judicial Conduct Commission, and that is the commission that the supreme court of Arizona has to hear complaints about judges. Am I correct that you were also instrumental in drafting proposals to allow for some public hearings after such cases are filed? Am I correct there?

Ms. SILVER. That is accurate, Mr. Chairman.

Senator LEAHY. Do you feel the same should be for Federal judges, the same rule?

Ms. SILVER. Mr. Chairman, I have not spent a lot of thought about that. I think some of the reasons why we felt that the matters should be placed in public may or may not apply in the Federal context. I would need some time to think about that. That was a very, very controversial issue.

Senator LEAHY. I understand.

Ms. SILVER. In the State system in Arizona, the judges are elected. I do think that Federal judges should not lose touch with the public because I think that they have a tendency—once you build that veil and if you don't get constructive feedback, then you may have a tendency to—your perspective may change. And so in some respects, there are benefits from having these proceedings in the public, but that would be something I think would take some consideration.

Senator LEAHY. And, Ms. Silver, how do you feel about lawyers being involved with pro bono work?

Ms. SILVER. I strongly believe that lawyers should be involved in pro bono work. I also believe that you cannot force lawyers, force people, and legislate people to do good deeds, and perhaps lawyers more than anybody else, not because lawyers are necessarily bad people and not that lawyers wouldn't want to do good deeds, but I know from now 20 years of practice, lawyers are very, very busy.

There is also another factor. For public lawyers, the malpractice premiums are not always available for public lawyers, so some of us who have been very interested in doing public service have been unable to do that because we didn't have the protection.

I would strongly encourage that the rule be aspirational, which is, I believe, the ABA rule. But in addition to that, I think the State bars should encourage, and effectively encourage, formally encourage, lawyers to engage in pro bono activities, and perhaps develop an award system. In Arizona, we do have such an award system where a pro bono lawyer who has, in fact, performed a significant amount of pro bono activities throughout the year is recognized by the entire legal community and sometimes monetarily.

Senator LEAHY. In fact, we look for it in our own questionnaires on pro bono work because, frankly, if someone is going to go on to the judiciary, it is one of the first things I look at, have they done pro bono work, because—and I grant you lawyers are very busy, but lawyers also have a privileged social and economic status in a community and there is a requirement to give some of that back.

Ms. Silver, do you have family or friends here with you that you would like to introduce now for the record?

Ms. SILVER. Yes. I have a very distinguished family and I feel humbled by them. Let me start over here. I have my husband and good friend and confidante who has, in fact, mentored me through this process, Steven Silver, who is a lawyer with the attorney general's office in Phoenix, AZ.

Seated next to him is my sister, Christine Frey. She is a doctor and she is responsible for—a director of the pharmacy in Stockton, CA. Seated next to her is the backbone of our family, Ann Olson, who is a retired nurse who is—she will not like me saying this—is 85 years old.

Senator LEAHY. I want you to know that my mother is 85 and my wife is a practicing nurse at an area hospital.

Ms. SILVER. Seated just in front of her is my favorite Aunt Pauline, who spent many years here in this city working as an executive secretary for the FTC. In front of her is my brother, Dr. James Olson, who is associate professor at Wright State University in Ohio.

Thank you very much for giving me the opportunity.

Senator LEAHY. And with complete confidence, you have nobody from the University of Vermont? [Laughter.]

Ms. SILVER. No. I am sorry. I was trying to think of some connection there.

Senator LEAHY. We will leave the record open. [Laughter.]

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Mr. Thompson, it is good to have you here. I notice in your questionnaire much of your practice has been in the

area of corporate finance. How do you move into areas of criminal jurisprudence?

**TESTIMONY OF ALVIN W. THOMPSON, WINDSOR, CT, TO BE  
U.S. DISTRICT JUDGE FOR THE DISTRICT OF CONNECTICUT**

Mr. THOMPSON. I was fortunate enough to have our former chief judge, Judge Cabranes, spend an afternoon with me a couple of months ago going through all of his forms that he had accumulated over his 15 years on the district court bench, and those have proven to be helpful. I am also meeting with our current chief judge, Peter Dorsey, at the end of this week so that I can review similar things with him.

I have been fortunate enough to have some partners who have sent me volumes of materials which have proven very helpful to me. In addition, they have spent time with me going over things that you can't get from written materials. They have been very helpful in terms of talking about the practicalities of practicing before judges in the District of Connecticut and, by implication, they have shared their views on what makes judges effective or not effective.

My materials from the Federal Judicial Center are on the way and I expect to spend quite a bit of time going through those, and also going to judge's school and some seminars, in addition.

Senator LEAHY. And you accept the fact that for one whose practice has been primarily in the civil side and primarily in a particular area of it that there is an affirmative duty on your part, as there is on everybody here, to come up to speed?

Mr. THOMPSON. I not only accept the fact that there is an affirmative duty, but I really look at it as an intellectual joy to learn all of these things. The process so far has been very intellectually stimulating and I look forward to learning about all the things I am going to learn about.

Senator LEAHY. We talked about court secrecy. Do you have any feelings on that, sealing an agreement, a settlement, in a case?

Mr. THOMPSON. Mr. Chairman, in a particular case I think I would have to balance the objectives that would be served by sealing the order, the privacy of the parties—were you positing a civil case?

Senator LEAHY. Yes.

Mr. THOMPSON. The privacy of the parties, the need or desire to reach settlement, perhaps, against the need of the public to know. I would distinguish between a situation where I am looking to protect a child or some other person who is an individual and a situation where there is potentially a dangerous product that is being sold to society at large.

Senator LEAHY. And the usual question: You and I are both members of the bar within the second circuit, and you have a second circuit court of appeals that rules and you personally don't like it. What controls?

Mr. THOMPSON. I would feel duty-bound to follow the precedent.

Senator LEAHY. Mr. Thompson, do you have some friends and family members here?

Mr. THOMPSON. I do have family here sitting over against the wall, I believe: my wife, Lesley Morgan Thompson; my son, An-



drew; my daughters, Catherine and Julia; and my mother, Grizell T. Parsons.

Thank you.

Senator LEAHY. It is nice to have you all here. I must note with your children and with the other children who have been here in the hearing room this afternoon that it has been a long hearing and the children have been absolutely wonderful, not to detract anything at all from the adults. We learn to do it, but the children have been absolutely wonderful and I think probably better behaved than I would have been at that age.

Thank you.

Mr. THOMPSON. Thank you.

Senator LEAHY. Senator Pressler, do you have any questions?

#### QUESTIONING BY SENATOR PRESSLER

Senator PRESSLER. Thank you, Mr. Chairman.

Mr. Thompson, give me your views on the subject of tort reform in terms of the role of the Federal district court judge—specifically. I am thinking of issues such as caps on damages or ruling on frivolous litigation, and so forth. What are your views on tort reform, and what is a Federal district court judge's role in this? Where does he have latitude?

Mr. THOMPSON. I guess in terms of sanctions, I believe that the scheme that is represented under rule 11 is fair. It is balanced. It was recently revised. My whole approach to sanctions would be to take a gradualist approach. I would first want to sit down and make sure that there had been effective communication between the lawyers. In my experience, very often there is an impasse because the parties really haven't been listening to each other or understood each other. I think that the remedies that are provided under rule 11 are varied, and that in different circumstances different remedies would be appropriate.

In terms of caps on damages in terms of tort reform, I find that a difficult issue personally. I believe that there is, on the one hand, a legitimate purpose served through allowing large damage awards in terms of convincing people who are in similar situations that they should reform their activities.

But as someone coming from the insurance capital of the world, I have to take notice of the fact that we do have an awful lot of awards where, for reasons of more sympathy than for reasons related to what has happened in the case, you have large awards which an outsider not having been involved in the case might view as inappropriate.

Senator PRESSLER. A lot of cases today are "settled" out of court and frequently a business decision is made to settle the case rather than going through the expense of trying it. How can a Federal judge help prevent that from happening, or should he?

Mr. THOMPSON. I am not sure a Federal judge should prevent a case from being settled for business reasons. I do believe a Federal judge should work through aggressive case management to make the system as efficient as possible and to make the process a cost-effective one for litigants so that they are less frequently presented with a situation where they decide that they must settle for reasons that are related to the cost of litigation.



When I say aggressive case management on the part of a Federal judge, I am thinking of things such as full utilization of the initial conference with the lawyers to draw up the schedule for litigation. I am thinking about an active role in facilitating—when I say facilitating, versus forcing settlement. I am thinking about a very active approach to managing discovery disputes, which can really drive up the costs of a matter.

One of the judges in Connecticut has received real kudos for handling them by telephone and not taking papers on discovery disputes—by telephone, but on the record. I am also thinking in terms of, you know, a very highly structured pre-trial conference so that you can make sure that the trial proceeds in a very efficient, cost-effective, yet fair manner.

Senator PRESSLER. Ms. Silver, the issue of the death penalty is one that some of my colleagues have submitted questions on. Any comments you have would be welcome.

Ms. SILVER. I understand under the new crime bill—and I am not as facile as I would like to be, but will be, should I be confirmed—there are 60 new death penalty provisions. I also am well aware that the Supreme Court of the United States has held that the death penalty is not a violation of the Constitution; it is not cruel and considered to be a violation of the eighth amendment cruel and unusual punishment.

I would have no problem in, first of all, engaging in the process to determine whether or not the death penalty should be imposed and, if necessary, to ensure after the decision is made that it is executed in accordance with the law.

Senator PRESSLER. When implementing the death penalty, do you believe it is appropriate to consider factors such as race which are unrelated to the unique facts of a given case?

Ms. SILVER. I don't believe that that is something that we can consider. I will say to you that I believe under the equal protection clause that there is some question whether or not that can be considered anyway, independent of what the crime bill had proposed, and if, in fact, it can be proved, applying the appropriate burden of proof, that that would be unconstitutional.

Senator PRESSLER. Mr. Moore, would you discuss the exclusionary rule and the various aspects of it that you will be experiencing as a Federal court judge? I have some specific questions, but you can just comment on your interpretation of it, whether you will take an expansive or a restrictive view of it, and so forth. Any comment?

Mr. MOORE. Yes, Senator. I have had to deal with the exclusionary rule as a Federal prosecutor and, since, as an individual lawyer representing defendants in Federal court, and I agree that it is one of the most difficult matters for a district court judge to deal with in the trial of a Federal criminal case.

You have the competing interests, of course, of the defendant to have excluded improperly seized evidence and you have the interests of the Government in making sure that the evidence that it has seized is admitted. In my opinion, it is less difficult now for a U.S. district court judge to deal with these issues after the decision in *Leon*, where you have the good-faith exception that had not been spelled out previously.

The dilemma that the district court judge has, and if confirmed the dilemma that I would have, would be to attempt to fairly and impartially decide whether or not there was, in fact, a good-faith exclusion that should be applied to that case.

Senator PRESSLER. Some law enforcement officers have complained to me about the exclusionary rule. It is a legitimate matter. As a judge you will have a great deal of discretion. Would you take a more expansionary or a more restrictive point of view on it?

Mr. MOORE. If I were confirmed, Senator, what I would have to do as a judge is I would simply just have to follow the law as it exists, and now as controlled by *Leon*. Even if I had any personal feelings one way or the other regarding the method and the manner in which evidence might be seized in a case, I would not let my personal feelings stand in the way of me ruling on that particular evidentiary matter based upon what the law was.

Senator PRESSLER. What have your experiences with the exclusionary rule been in your practice in the past?

Mr. MOORE. Senator, mostly in Federal criminal matters involving either a search without a warrant—what we call a probable cause search where the officer would make a stop or make an arrest without a warrant and then seize evidence, and then that evidence would be challenged as to whether or not that probable cause seizure was, in fact, good evidence.

The other example is where there is a seizure with a warrant where the agent has gone to a United States magistrate with an affidavit, has received a search warrant and gone out and seized evidence, and then the question arises, was the affidavit and the testimony of the agent before the magistrate fair and accurate that a reasonable, unbiased magistrate should have issued the warrant. And then the question arises as to whether or not the search exceeded the scope of the warrant.

So, as a district court judge, you would have to decide those matters, and there is a clear body of law that exists now that determines those matters and you would just have to rule on them on a case-by-case basis based on the facts presented.

Senator PRESSLER. Mr. McLaughlin, what is your view of our habeas corpus rules and the large number of habeas appeals? As a district court judge, how would you handle this matter?

Mr. McLAUGHLIN. Well, Senator, I think that there has been some fairly recent pronouncements by the U.S. Supreme Court, such as the circuit judge nominee alluded to. In answer to your question, as a district court judge, if confirmed, I would quite simply feel bound by any applicable precedent, whether it was Supreme Court or precedent out of my circuit. So I can tell you, sir, that I would simply and uniformly follow the law.

Senator PRESSLER. Given the large number of habeas appeals that are filed, what are your feelings in terms of the State court appeals having to be exhausted before Federal court appeals begin?

Mr. McLAUGHLIN. Well, Senator, I think with respect to prisoners utilizing the appeal process, I think that as Judge Parker indicated, both the Federal side and the State side play an important and dual and tandem role, and I certainly think there is some merit, as the judge indicated, to the State courts passing on those

issues in the first instance, and obviously the Federal court having an opportunity to pass on it as well.

Senator PRESSLER. Mr. Katz, let me say, first of all, I am one of those who takes a dim view of the ABA's involvement in the selection of Federal judges. In your case, apparently they did not endorse you because you haven't done a lot of litigation.

But I would think most of a Federal judge's work is not necessarily in a trial situation, is that correct? In a broader sense, give me some analysis. Since this committee receives materials from the ABA and since the ABA has not given you a "qualified" rating, give me some analysis of that. What do you think about the ABA's process? Should they be involved? What is the rebuttal to their position?

Mr. KATZ. Senator Pressler, I would say that the ABA has a function to perform. As I pointed out in answer to Senator Leahy's question, I believe that every system has the opportunity to be flawed, and this one in my case, I believe, was flawed.

It is my feeling that one must look at what the demands are, as you well have pointed out, upon a Federal district court judge. In our district, somewhere between 94 and 95 percent of all cases filed are resolved short of trial. That indicates that it is extremely important, as one of my fellow nominees has indicated, for case management. Case management means being able to understand what the issues are, to be able to understand what the law is and to apply them, and to manage the case and manage your docket in such a manner that you can facilitate moving those cases along and finding a resolution or assisting lawyers and litigants in finding a solution short of the expensive and protracted trial process.

That does not mean we are not ready to try cases. I believe that I would be able to try cases, but it means that through my practice, in which I have counseled others, in which I have had the opportunity to arbitrate, in which I have been viewed as fair, as reasoned in my approach, that I would have the ability to handle that administration of justice, not just the litigation or trial aspect of litigation.

Trial is the end of—at least at the trial court level, is the end of the litigation process. I believe I understand the litigation process, which begins prior to the filing of a complaint with an attempt to resolve it—the filing of the complaint and the process which leads up to the end result, the trial itself. As I have said, I believe in this case their position is flawed and I would be able to perform appropriately.

Senator PRESSLER. I might ask Mr. Moore, according to the ABA's view, a young person who hoped to be a Federal district court judge should become a litigator. If a very able lawyer in any other field wanted to become a Federal district judge his chances would be dim if we took the ABA's recommendations to heart.

Does this mean that—generally speaking—almost all Federal district judges have been litigators? What is your opinion of this? Is that true and is that good?

Mr. MOORE. Mr. Chairman, I have seen examples of Federal district court judges who were not litigators prior to the time of their going on the bench and I have seen those judges become very good United States district court judges. On the other hand, I have seen



litigators ascend to the bench who were not considered by the lawyers that appeared before them many times to do a good job in the case. I am not sure I am qualified to judge in this case. I only tell you what my experience has been.

Senator PRESSLER. Ms. Gillmor, as a public defender in 1973 you argued in more than one case that Hawaii's antiprostitution statute violated the Equal Protection Clause of the Federal Constitution. What is Hawaii's antiprostitution statute, and do you still believe, if you ever did, that antiprostitution statutes such as Hawaii's are unconstitutional? If so, why? If not, why not?

Ms. GILLMOR. Well, I would like to say first, Senator Pressler, that that was over 20, 21, years ago, and I was an advocate. I can't honestly say that I thought an awful lot about it until recently when I was putting forward the information for this confirmation process.

Interesting things have happened in the interim between the cases that I went forward with over 20 years ago. The Hawaii constitution has an equal rights amendment that provides for no discrimination based on sex, and over the years the question that I had raised became one that courts went different ways on in the lower court, whether or not the customer and the prostitute should both be charged.

In 1990, the legislature, without any influence from me, I might add, decided that the constitution of Hawaii did require that the prostitute and the customer be charged, and that the equal rights amendment of Hawaii required that result. So the legislature has come to follow what I said all those years ago and it has sort of become a moot point in Hawaii.

Senator PRESSLER. I would like to ask each of you in your own words to describe what principles will guide you, or what methods will you employ in deciding cases of first impression. I know you will all follow the higher courts carefully, and I know that you will all stick to stare decisis, and so forth. But let's face it, district courts in this country face a lot of cases of first impression. Maybe you disagree with that.

When facing a case of first impression, I would like to get a statement from each of you on how you would rule such a case. We might just start right here.

Ms. GILLMOR. Well, I believe it is very important to be thorough in this regard, and I think the first thing that a judge should do is to look at the plain language of the statute and see whether or not it is clear how one should rule just from the statute on its face. If that isn't possible, then one should go to the legislative history and look at the intent of the legislators, and then also at the same time look at the analogous cases and see what can be found in other Federal—you know, within your circuit, outside of your circuit and other circuits, and in the State court, too, if that is illuminating.

I think that a wise judge looks and sees what others who have been faced with something similar have done and tries to incorporate the knowledge and the wisdom that others have used in similar situations. I wouldn't want to just go for it. I think that is something where you have to spend a lot of time and thought and scholarship in attempting to come to a conclusion.



Mr. KATZ. I think that the most important thing, obviously, is the scholarship in the area. Most of these cases, I would presume, would be statutory construction. Obviously, if it is the plain meaning of the statute, one has to apply that.

There are also instances where constitutional issues would come up, and those would—it would be rare that this would be an opportunity to plow new furrow, but if that were the case you would want to look to analogous precedent and apply that to this situation that is then before you. Legislative history in statutory construction is very instructive, but only if the statute does not have a plain meaning on its face.

Mr. McLAUGHLIN. Senator, I would just echo some of the sentiments just expressed. In a genuine case of first impression I think the trial judge, if it is a case of statutory construction, obviously goes to the plain meaning of the statute itself, reads it very carefully, and tries to decipher what the legislature was attempting to get across. Legislative history is oftentimes an invaluable tool in trying to decipher where the legislative body was coming from.

Third, by way of looking for a rudder or some direction, you do look for analogous cases. You might not find a case on all fours, you might not find a case that has threes, but there might be a couple of components of a case that is similar. I think that is the process that a trial judge goes through and hopefully reaches a well-reasoned decision.

Mr. MOORE. Senator, if confirmed and called upon to rule on those what I think are probably rare district court instances where a district court judge is called to rule on first impression, after first defining whatever that first-impression issue was, then I think it is important to start your reasoning from what we call sound judicial principles to begin your reasoning with, to use precedents from other circuits if there is no precedent in your circuit, to use cases that, as we say, may not fall on all fours, but what are analogous cases, to rely upon and consider the briefs of the opposite parties, to consider their research in their briefs, and to look at the Congressional Record or the comments, or the legislative record, in the event if it was a statute, and then, pulling all of that together, using your best reasoning to try to resolve that issue.

Ms. SILVER. I think, Senator, that sometimes determining what is a matter of first impression is a very difficult decision to make. I think attorneys more often will say this is matter of first impression, meaning I think the initial response is that this is something that has never in the history of mankind ever been decided.

My feeling and my opinion is that there are very few of those cases. Whether you separate them in the area of legislative history or you separate them in the area of legal decisions, you can always find a lynch pin somewhere either legislatively to provide you some guidance or within the case law that does exist. It takes a tremendous amount of research, scholarly analysis, to ascertain what the true answers should be, and that is, of course, the responsibility of the judge.

Mr. THOMPSON. Senator, assuming it were a case involving the interpretation or applicability of a statute, I would look first to the plain meaning of the statute. I would also look to the legislative history, to the extent that it was clear, and then if it were a par-

ticular statute that were part of a larger set of statutes, such as the Securities Act, I would look to whether there were some scheme or philosophy that was evidenced by that set of statutes. In other cases, and in those cases, too, I would also look at analogous lines of precedent and try to determine which is most applicable.

Senator PRESSLER. In the interest of time, I will submit, if it is all right with the chairman, most of the remainder of my questions for the record. Please answer them individually and not have congressional liaison write the answers for you. Recently, another Senator in the Foreign Relations Committee submitted some questions for the record and they all came back identical, which meant that Congressional Relations at State had answered them. I am sure that won't be the case here.

But in any event, my colleagues have submitted some questions to me and I have asked most of those. The Senators who are not present and their staffs do read these transcripts as time passes and it is a very serious matter, as you all know.

Let me say I am very proud of this panel. I think that our Federal judiciary represents the best in our society, and we depend on you. Once you are there, you are there for life. Somehow, our system of government works in this country. Everybody criticizes it, but it is the best in the world. In my opinion, we have the best judiciary in the world, in spite of all the criticism it receives and the many proposals made to improve it.

In any event, this is an essential part of this process. I commend this panel and I commend you, Mr. Chairman, and I will submit the remaining questions for the record for each panelist to answer individually. Is that agreeable?

Senator LEAHY. So ordered.

I thank the panel of nominees very much. It has been a lengthy afternoon. If it is any consolation, judges usually get to go home, though, at the end of the day. I think our schedule is going to go until about midnight, or later, tonight, only because it did last night; it probably will again tonight. I was thinking that at 5 this morning as I headed back into the office.

I appreciate you all being here and I appreciate the time you have taken. If you receive written questions—we will keep the record open until the close of business today for those—please respond as quickly as you can.

Thank you all very much for being here, and I applaud you and commend you and the President for nominating all of you. Thank you.

We should note for the record in regard to Ms. Silver's nomination that Dr. Lidy Koor, who is now the president of ASU, and a good friend of mine, was formerly the president of the University of Vermont. [Laughter.]

We have William E. Willis, the Chair, and Charles English, the sixth circuit representative, of the American Bar Association Standing Committee on Federal Judiciary.

Gentlemen, would you please stand and raise your right hands? Do you solemnly swear the testimony you will give in this matter will be the truth, the whole truth and nothing but the truth, so help you God?

Mr. WILLIS. I do.

Mr. ENGLISH. I do.

#### QUESTIONING BY SENATOR LEAHY

Senator LEAHY. Gentlemen, I appreciate the length of time that you have stayed here. Because we are being summoned back to the floor, and rather than take the chance that I would have to go back to the floor and you would have to wait here another hour or so until I got back, we will put your statement in the record in full.

Mr. English, in your testimony you stated that the ABA feels that Mr. Katz does not have substantial trial experience, and you point out very specifically in that case that he has never tried a jury case or a criminal case. Mr. Katz has said that he does not have substantial trial experience, but he has had a wide variety of legal experiences, including complex business, corporate, and tax matters, including sales and acquisitions of significant businesses, Federal income tax fraud cases, and related civil matters.

Is it the ABA's position that this is not enough to offset a lack of trial experience?

#### TESTIMONY OF WILLIAM E. WILLIS, CHAIR, AND CHARLES ENGLISH, SIXTH CIRCUIT REPRESENTATIVE, AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON FEDERAL JUDICIARY

Mr. ENGLISH. Yes, it is, Mr. Chairman. In the case of a U.S. district court judge that is handling matters and deciding on matters, Mr. Katz would be called upon to have an experience and preside in an area where he has no exposure or experience.

Handling complex business transactions is not a substitute for experience in the litigation process. It requires a familiarity with the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedures, and particularly the Federal Rules of Evidence. Mr. Katz has virtually no experience in any of these areas, but yet he will be called upon to preside and make rulings on these matters without experience.

I would point out that our committee believes that this is very expensive to the public whose rights and property are going to be affected by that, and that delay and expense to litigants and the public in dealing with a judge who lacks experience is not in the public interest.

Senator LEAHY. Well, you have also looked at his intellectual background and his legal abilities generally. How do you feel about them?

Mr. ENGLISH. Mr. Katz is a very experienced corporate lawyer. Mr. Katz concedes that he lacks litigation experience. The qualifications of the two are entirely different, and as far as submitting evidence of analytical ability, of legal writings, the only experience and the only matters that were submitted, even after two interviews by two different attorneys, members of the committee—the only matters that could be submitted by Mr. Katz were matters that related to contracts, matters that related to securities offerings, but virtually no briefs, no evidence of any scholarly or analytical legal work that would indicate the analysis that should be present in a qualified trial judge.



Senator LEAHY. In fact, on the questionnaire, the 10 most significant cases, it is my understanding that you note only a handful were listed, is that correct?

Mr. ENGLISH. Yes, sir. There were only three listed. What we tried to do—and I would point out that the purpose of the Standing Committee is only to give advice to this committee.

Senator LEAHY. I understand.

Mr. ENGLISH. In order to give advice, we must solicit information, we must be independent, and we must be thorough. We asked Mr. Katz to submit, as we do all nominees, the 10 most significant litigated matters that he has handled throughout his career. He was only able to list three.

Those three—one of them involved a proceeding in 1980 that was a motion in Federal court. The others went back to the 1950's or 1960's and were rather routine matters. There was simply—Mr. Katz concedes that he simply is not a litigator. He hasn't had the experience in the well of the court.

Senator LEAHY. And is this unusual for the ABA to come back with a "not qualified" rating?

Mr. ENGLISH. I would say that I have served on the committee—I am beginning my second 3-year term. It is a very unusual matter. I think in the last year, I believe, we have considered about 140 nominees, 139 or 140, and we have only found about 3 not qualified.

Senator LEAHY. A minority of the committee, though, did find him qualified, is that correct?

Mr. ENGLISH. It was a small minority, yes, sir.

Senator LEAHY. Is this part from your report a fair view of your report:

There is no question that Mr. Katz has integrity, possesses judicial temperament, has earned a solid reputation as a fine man and one who has contributed generously to civic and public service activities. His pro bono efforts deserve the highest praise, but to place him on the Federal trial bench is to put him into an environment with which he has no familiarity or experience?

Mr. ENGLISH. That is correct, sir. There is no question but Mr. Katz has the highest integrity. He is an experienced and outstanding corporate lawyer. He has been active in the community. He is a personable fellow. I like David Katz. All of us do, when you look at David Katz' experience, you must look at it independently and objectively, and those matters have to be cast aside in our committee. And a substantial majority of our committee, after considering all of these factors, considered that Mr. Katz was not qualified for appointment to the United States Federal trial bench.

Senator LEAHY. Sir, would you like to add anything to this?

Mr. WILLIS. Mr. Chairman, I would like only to make one comment.

Senator LEAHY. Sure.

Mr. WILLIS. I was very disturbed this afternoon when I heard Senator Metzenbaum state that our committee had in the past found Justice Thurgood Marshall to be not qualified when he was nominated for the second circuit court of appeals. Our committee has never claimed infallibility, but I had hoped that we had not made a mistake of judgment of that magnitude. We have gone into



the archives and I am very relieved to find that our committee, in 1961, found Justice Thurgood Marshall well qualified.

In a letter from the then chairman, Bernie Segal, of Philadelphia, to then deputy attorney general, later Justice, Byron White, it was reported that, "I am pleased to advise you that as a result of our investigation, our Committee is unanimously of the opinion that Thurgood Marshall, Esquire, of New York, New York, is well qualified for appointment as United States Circuit Judge for the Second Circuit." I wanted to be sure that the record was clear in that respect.

Thank you.

Senator LEAHY. If anything, it was in this committee where then Mr. Marshall, later Judge Marshall, and then later Justice Marshall, met some difficulty.

Mr. WILLIS. My recollection from history is he did have some difficulty with this committee, but he did not have difficulty with the ABA.

Senator LEAHY. I was a law student at the time at Georgetown. I remember coming up during part of those hearings, and some of the objections to him had absolutely nothing to do with legal abilities. It was a time of transition in our country's race relations and some of that was reflected in that hearing, to put as gentle a view on it as possible. As I said, I was a law student. I was not a member of the committee.

There were many Senators on the committee who acquitted themselves very, very well and very responsibly both for the committee and the judiciary, and some others who found that beyond their ability.

Gentlemen, I thank you very much. We will keep the record open both for you and for Mr. Katz should there be anything further you would like to add.

Mr. WILLIS. Thank you, Senator. Nothing further.

Mr. ENGLISH. Thank you.

Senator LEAHY. I apologize again for the delay. This thing went longer than we thought, but unfortunately these things happen at the end of a session, especially one like this. Thank you very much.

Mr. ENGLISH. Thank you, sir.

[The prepared statements of Messrs. Willis and English follow.]

#### PREPARED STATEMENT OF WILLIAM E. WILLIS

Mr. Chairman and Members of the Committee: My name is William E. Willis. I am a practicing lawyer in New York and the Chair of the American Bar Association's Standing Committee on Federal Judiciary.

Our Committee investigated the qualifications of David Allen Katz for appointment to the United States District Court for the Northern District of Ohio. A substantial majority of the members concluded that he was Not Qualified. A minority would have found him Qualified. President Clinton has submitted to the Senate 140 nominees for appointment to the Federal Courts. Only 3 of those nominees have been found Not Qualified by our Committee. In those cases when a candidate is rated "Not Qualified" the Committee believes it is obligated to submit its findings to the Senate Judiciary Committee.

The Standing Committee takes very seriously its responsibility to conduct an independent examination of the professional qualifications of judicial candidates; and conducts a thorough, unbiased and fair examination of a candidate's judicial temperament, professional competence and integrity. It applies the same standards and criteria impartially to all candidates. It has been carrying out its responsibility for over 40 years.

I was not a member of the Committee when it reviewed the qualifications of Mr. Katz. Charles E. English, of Bowling Green, Kentucky and the Sixth Circuit Member of our Committee, led the investigation into the qualifications of Mr. Katz and is appearing here today to present the views of our Committee.

#### PREPARED STATEMENT OF CHARLES E. ENGLISH

Mr. Chairman and Members of the Committee: My name is Charles E. English. I am a practicing lawyer in the State of Kentucky. I conducted, as the Sixth Circuit member of our Committee, the initial investigation of the qualifications of Mr. David A. Katz for appointment of the United States District Court, Northern District of Ohio.

The Committee has concluded that Mr. Katz is Not Qualified for appointment to the Federal District Court. This conclusion was reached after a careful review of the written submissions of Mr. Katz, personal interviews of the candidate by one active member and one former member of the Committee on two separate occasions, and confidential interviews of over 40 Federal and state court judges, both trial and appellate, and practicing lawyers and legal educators in the Northern District of Ohio.

It is important to understand that the Committee does not simply apply a calendar measure in evaluating the professional qualifications of judicial candidates. What is important is the nature of one's experience. The Committee believes, and this belief is widely shared by sitting trial judges and lawyers, that substantial courtroom and trial experience is important for prospective nominees to the District Courts. The trial court judge must be knowledgeable concerning and adept at applying the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, as well as the Federal Rules of Evidence. This ability springs from experience gained over time in the courtroom.

Mr. Katz, a distinguished member of the Bar of Ohio for over 37 years, has had almost no trial experience in those years. He readily acknowledges that he is not a trial lawyer, and more specifically that he has not tried a civil or criminal case in state or Federal court in the last 20 years. This is understandable since early in his career Mr. Katz elected to become a corporate lawyer.

One of the questions that we ask candidates on the Personal Data Questionnaire is to describe ten of the most significant litigated matters or matters representative of the potential nominee's experience, which the nominee personally handled. Mr. Katz listed only three matters.

Of the three matters, only one involved a proceeding in federal court. That matter occurred 14 years ago and involved only a hearing requiring a corporation to produce a list of stockholders. It was not a jury or even a bench trial; the matter was disposed of by motion.

The second matter occurred over 30 years ago. It was a state court proceeding that was disposed of on a statute of limitations issue and did not involve a jury trial. The third case was in Municipal Court in 1960, involved a convenience store employee charged with violating Ohio's Sunday closing law and did not involve a jury trial.

We ask candidates to produce copies of at least five briefs or other legal writings that will give the Committee an opportunity to judge the candidate's ability to carry out the analytical writing requirements for a Federal Judge. Mr. Katz had no brief or writings that would reflect his ability to handle the type of legal analysis required of a Federal judge or his familiarity with the substantive legal issues facing the courts today. He did submit copies of corporate documents. Mr. Katz is a first-rate corporate lawyer, experienced in preparing contracts, securities offerings and the like. But he has shown no evidence of his ability to perform the kind of legal analysis or do the kind of legal writings that would be required of a Federal judge.

There is no question that Mr. Katz has integrity, possesses judicial temperament, and has earned a solid reputation as a fine man and one who has contributed generously to civic and public service activities. His pro bono efforts deserve the highest praise. But to place him on the Federal trial bench is to put him into an environment with which he has no familiarity or experience. A federal judge today faces a massive criminal docket. Mr. Katz has no background whatsoever in criminal litigation. The Federal judge must preside over jury trials. Mr. Katz has no jury trial experience. His total trial experience is minimal and occurred over 20 years ago. His participation in a few arbitrations does not substitute for this lack of courtroom experience. Even the few arbitrations were mainly of the settlement type and not the evidentiary kind.

Mr. Katz, to his credit, recognizes his lack of experience and background in the courtroom and concedes that he would be in a learning posture for "a couple of

years". He will have to master the Civil and Criminal Rules, learn the Federal Rules of Evidence and acquire a solid grasp of their proper interpretation and application. The trial judge must react immediately as the trial progresses and must do so correctly, no easy task given the complex cases facing the Federal courts today. We submit that it is not fair to the public to place on the Federal bench one who lacks the background and will require a lengthy learning curve.

While substantial courtroom and trial experience (as a lawyer or a trial judge) is important to nominees for the trial courts, it is, of course, not absolutely essential and can be compensated by the presence of other experience that is similar to court trial work or by significant evidence of distinguished accomplishments in the field of law. The majority of the Committee did not find that the compensating evidence outweighed the absence of courtroom and trial experience.

Senator LEAHY. The committee stands adjourned.

[Whereupon, at 5:00 p.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Fred Irving Parker

2. Address: List current place of residence and office address(es).

Office: United States District Court  
P.O. Box 392  
Burlington, VT 05402-0392

Residence: 291 South Prospect Street  
Burlington, VT 05401

3. Date and place of birth.

02/02/38  
Boston, Massachusetts

- 4.
- Marital Status
- : (include maiden name of wife, or husband's name).
- 
- List spouse's occupation, employer's name and business address(es).

Spouse's full name: Barbara Louise Cain Parker

My spouse is not now, nor has she been employed outside the home for the past several years. However, in 1993, she was paid \$569 for preparing the program for a non-profit charitable organization (Sheldon Museum in Middlebury, Vermont), which sponsored a July 4th concert by the Vermont Symphony Orchestra. A like payment may be forthcoming in 1994.

- 5.
- Education
- : List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

College:Date:

Lowell Technological Institute  
No degree received.

1956-1958

University of Massachusetts  
BA English, Cum Laude, 1962

1959-1962



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 2

5. Education (continued):Law School:Date:

Georgetown Law School  
LLB, 1965

1962-1965

6. Employment record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Employment:Year:Name:Position:

2/62-9/62	Washington National Bank Washington, DC	Bank Proofer
2/62-9/62	Melpar Electronics Falls Church, VA	Tech Writer
6/63-8/63	Captain Linnell House Orleans, MA	Bartender/Manager
6/64-8/64	Nossaman, Thompson, Waters & Moss Los Angeles, CA	Law Clerk
9/63-6/64 9/64-6/65	Georgetown Law Center (Library) Washington, DC	Library Assistant
1965-1966	Lyne Woodworth & Evarts Boston, MA	Attorney
1966-1969	Yandell & Page Burlington, VT	Clerk/Attorney
1969-1972	VT Attorney General's Office Montpelier, VT	Deputy Attorney General
1972-1975	Langrock & Sperry Middlebury, VT	Assoc./Partner

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 3

6. Employment record (continued):Employment:

<u>Year:</u>	<u>Name:</u>	<u>Position:</u>
1975-1982	Langrock Sperry Parker & Stahl Middlebury, VT	Partner
1982-1990	Langrock Sperry Parker & Wool Burlington, VT	Partner
1990 to present	U.S. District Court, District of Vermont Burlington, VT	District Judge

Partnerships:

<u>Year:</u>	<u>Name:</u>
1976-1982	Parker & Mullany Apts. PM Properties Burlington, VT
Owned and rented commercial real estate properties.	
1975-1982	Langrock Sperry Parker & Stahl Middlebury, VT
Leased office at 15 South Pleasant Street, Middlebury, Vermont to law firm of Langrock Sperry Parker & Wool.	
1976-1982	Parker & Mullany Apts. PM Properties Burlington, VT
Owned and rented commercial real estate properties.	
1982-1990	Peck House Partnership Burlington, VT
Leased business office at 275 College Street, Burlington, Vermont to the law firm of Langrock Sperry Parker & Wool.	
1986-1988	Vermont Purebreds Burlington, VT
Raised and sold purebred cattle.	

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 4

6. Employment record (continued):Partnerships (continued):Year:Name:

1984 to Present

Americal Associates

I hold a limited partnership interest, which I believe to be of little or no value. Americal Associates is a California limited partnership organized to acquire an estate in certain real property, including office buildings located in National City and Stockton, CA, and two bank branch buildings in Del Mar and Rancho Bernardo, CA. Originally, this investment was a tax shelter. Its value in that regard was eliminated by the Tax Reform Act of 1988 and, thereafter, I transferred that portion of my interest that gave rise to tax deductions to others for consideration.

Honorary Director:

1992 to present

Stern Center For Language  
& Learning  
Winooski, VT

Stern Center is a non-profit organization which provides testing, diagnosis and treatment for learning disabled persons, usually children. There are no duties connected with being a Honorary Director. I have simply lent the support of my name to a non-profit organization that I support.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

YES.

Date: 1955 to approximately 1962

Branch: United States Marine Corp Reserve

Rank: Corporal

Serial Number: 155-14-85 (?)

Discharge: Honorable

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Graduated Cum Laude, University of Massachusetts, 1962;  
Managing Editor, *Georgetown Law Journal*, 1964-1965;  
Listed in "The Best Lawyers In America", 1987-1988  
editions under three categories.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 5

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Bar Associations:

Vermont Bar Association, 1967 to present;  
 Chittenden County Bar Association 1967 to 1972 and  
 1980 to present;  
 Vermont Bar Association Special Committee on the Reform  
 of the Judiciary, Chair 1988-1989.

Legal:

Vermont Law Enforcement Training Council, Chair,  
 1973-1979;  
 Professional Conduct Board of the Vermont Supreme Court,  
 1975-1979 and  
 Judicial Conduct Board of the Vermont Supreme Court,  
 1982-1988.

Judiciary:

Advisory Committee on the Civil Justice Reform Act  
 of 1990 Committee, 1991 to present;  
 Member of the Judicial Branch Committee of the National  
 Judicial Conference, 1993 to present;  
 Member of the Second Circuit Judicial Council, 1991 to  
 present and  
 Sit by designation on the United States Court of Appeals  
 for the Second Circuit, 1991 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Memberships (lobbying):

Boats U.S., is a national organization of boaters which, among other things, lobbies before the United States Congress regarding boating issues - 1980 to present.

American Association of Retired Persons (AARP) is a national organization of persons over 50 years old which, among other things, lobbies before the United States Congress regarding issues of interest to elderly citizens - 1989 to present.

Other Organizations (no-lobbying):

Lake Champlain Yacht Club - 1973 to present;  
 Stern Center For Language & Learning -  
 Honorary Director - 1992 to present.

...

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 6

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

<u>Court:</u>	<u>Date:</u>
Supreme Judicial Court, Commonwealth of Massachusetts (Let lapse after move to Vermont.)	09/65 to 02/67
Supreme Court, State of Vermont	02/07/67
United States District Court, District of Vermont	04/18/67
United States Supreme Court	03/08/71
United States Court of Appeals, Second Circuit	03/09/78

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Writings:

Casenote (unattributed) 52 Geo. L.J. 644 (1964). (Attached).

Eleven formal opinions of the Attorney General issued over my name during the years 1969 through 1971 when I was Deputy Attorney General for the State of Vermont. Copies of those opinions are attached.

Edited:

Georgetown Law Journal, Volume 53 (1964-1965) (Managing Editor).

Speeches:

Attached are copies of a speech I deliver at naturalization ceremonies held in the United States District Court in Burlington, Vermont, and a speech I gave at the Vergennes, VT Memorial Day celebration on May 30, 1994.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 7

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent.

Date of last physical examination: March 14, 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I am currently Chief Judge of the United States District Court for the District of Vermont. I have held this position since November 1991.

I began service as a United States District Judge for the District of Vermont on September 4, 1990. I was appointed by President George W. Bush on August 7, 1990.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

A. Ten Most Significant Opinions:

\* Copies of unpublished opinions as noted are provided in Appendix 1.

- 1) *McLaughlin v. Anderson*, 962 F.2d 187 (2d. Cir. 1992) (concurring opinion).
- 2) *Elliot v. United States Fish & Wildlife*, 747 F.Supp. 1094 (D.Vt. 1990), *summ. judg. granted, dismissed*, 769 F.Supp. 588 (D.Vt. 1991).
- 3) *Chabad-Lubavitch v. City of Burlington*, 754 F.Supp. 372 (D.Vt. 1990), *aff'd*, 936 F.2d 109 (2d Cir. 1991), *cert. denied*, 112 S.Ct. 3026 (1992).
- \*4) *Shaw v. Agri-Mark*, slip op., cv. dkt. no. 2:93-119 (D.Vt. 1994).

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 8

15. Citations (continued):A. Ten Most Significant Opinions:

- \*5) *Howe, et al. v. Cone Blanchard*, slip. op., cv. dkt. no. 2:93-326 (D.Vt. 1993).
- 6) *Vermont Gas v. USF&G*, 805 F.Supp. 227 (D.Vt. 1992).
- 7) *Abenaki Nation of Mississiquoi v. Hughes*, 805 F.Supp. 234 (D.Vt. 1992), *aff'd* 990 F.2d 729 (2d. Cir. 1993).
- \*8) *Glinka, et al. v. Abraham & Rose, et al.*, slip op., cv. dkt. no. 2:93-291 (D.Vt. 1994).
- 9) *Gerrish Corp. v. Universal Underwriters*, 754 F.Supp. 358 (D.Vt. 1990), *aff'd* 947 F.2d 1023 (2d. Cir. 1991), *cert. denied* 112 S.Ct. 2939 (1992).
- \*10) *Frank v. United States*, slip op. cv. dkt. no. 2:94-135 (D.Vt. 1994) (not yet published).

B. Short Summary Of Decision Reversed:

- 1) *Keleher v. New England Telephone and Telegraph Co.*, 755 F.Supp. 117 (D.Vt.), *vacated sub nom. City of Burlington v. New England Telephone*, 947 F.2d 547 (2d Cir. 1991).

ISSUE ON APPEAL:

Appeal of district court order that invalidated a City of Burlington Ordinance which required utilities using and occupying City streets to pay a franchise fee.

HOLDING:

Vacated and Remanded. Tax Injunction Act creates absolute jurisdictional bar to federal involvement in state and local revenue collection schemes. The district court therefore lacked jurisdiction over the city's enforcement action.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 9

15. Citations (continued):B. Short Summary Of Decision Reversed:

- 2) *U.S. v. Ferrara*, 954 F.2d 103 (2d Cir. 1992) (no lower court opinion).

ISSUE ON APPEAL:

Appeal from judgment of the district court convicting defendant of bank fraud pursuant to a plea agreement. Judge Parker sentenced the defendant for five years, the maximum under the statute, to commence the day of sentencing and run concurrently with a federal sentence the defendant was then serving. Defendant claimed that at the time he entered his plea agreement in front of Judge Billings, he was not warned that he would not have the right to withdraw his plea if the sentencing judge failed to accept the recommended sentence under the plea agreement. Defendant claimed that this was a violation of Fed. R. Crim. P. 11.

HOLDING:

Judgment of conviction vacated. Combined violation of Rules 11(e)(1)(B) and 11(e)(2) were not harmless and defendant should be given the chance to withdraw his guilty plea.

- \*3) *Barringer v. Griffes*, slip op. cv dkt. no. 91-231 (D.Vt. 1991), rev'd, 964 F.2d 1278 (2d Cir. 1992).

ISSUE ON APPEAL:

Appeal of district court's dismissal of constitutional challenge to Vermont's motor vehicle purchase and use tax on the grounds that the Tax Injunction Act precludes litigation of this claim in Federal Court because Vermont's administrative tax refund procedure provides a plain, speedy, and efficient remedy.

HOLDING:

Reversed. Because it is not clear that Vermont's Tax Commissioner could rule on the facial constitutionality of the motor vehicle tax at issue, the Vermont administrative procedures for obtaining a refund were not plain, speedy and efficient and thus the Tax Injunction Act did not deprive the court of jurisdiction.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 10

15. Citations (continued):B. Short Summary Of Decision Reversed:

- 4) *U.S. v. Cunavelis*, 969 F.2d 1419 (2d Cir. 1992) (no lower court opinion).

ISSUE ON APPEAL:

Appeal from sentence imposed by district court. Defendant contended that the Court erred by: (1) holding that it lacked discretion to reduce her Guidelines offense level more than the amount specified in the plea agreement; (2) imposing a two-level upward adjustment for obstruction of justice based on the defendant's untruthful statements at the hearing on her motion to suppress.

HOLDING:

Affirmed in part, vacated and remanded. The determination that the Court lacked discretion to deviate from the reduction in offense level specified in the plea agreement was upheld. The obstruction of justice enhancement, however, could not be made without an independent finding that, viewing the testimony in light most favorable to the defendant, the defendant gave false statements. Because the Court relied on its prior finding at the suppression hearing that the defendant had testified untruthfully and did not make an independent finding regarding obstruction of justice pursuant to U.S.S.G. 3C1.1, the sentence was vacated and remanded for reconsideration of the obstruction of justice enhancement.

- 5) *Morse v. University of Vermont*, 776 F.Supp. 844 (D.Vt. 1991), *aff. in part, rev. in part* 973 F.2d 122 (2d Cir. 1992).

ISSUE ON APPEAL:

Former university student appealed from district court's grant of summary judgment for the University of Vermont based on statute of limitations grounds.

HOLDING:

Affirmed in part, reversed in part. The determinations that the Rehabilitation Act Claim was time-barred, that Vermont's three year statute of limitations was the appropriate limitations period in light of the federal statute's silence on the issue, and that retroactive application of the limitations period was appropriate were affirmed.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 11

15. Citations (continued):B. Short Summary Of Decision Reversed:

5) *Morse v. University of Vermont* (continued):

HOLDING (continued):

However, it was an abuse of discretion not to remand the state law claims to state court once the federal claim was dismissed before trial where a novel issue of state law was presented. Accordingly, the grant of summary judgment on the federal claim was affirmed, and the grant of summary judgment on the state claim was reversed and remanded with instructions to remand the pendant state cause of action to the Vermont courts.

6) *Barringer v. Griffes*, 810 F.Supp. 119 (D.Vt. 1992), rev'd, 1 F.3d 1331 (2d Cir. 1993), cert. denied, 114 S.Ct. 879 (1994).

ISSUE ON APPEAL:

Appeal of district court's dismissal of suit seeking declaratory and injunctive relief based on claim that Vermont's Motor Vehicle Purchase and Use Tax was unconstitutional.

HOLDING:

Reversed (2-1). Vermont's Motor Vehicle Purchase and Use Tax is inconsistent with the Commerce Clause test of *Complete Auto Transit v. Brady*, 430 U.S. 274, 279 (1977) because it is not fairly apportioned and because the tax discriminates against interstate commerce (Factors 2 and 3). Judge Van Graafeiland filed a dissenting opinion agreeing with the analysis of Chief Judge Parker.

7) *U.S. v. McGregor*, 11 F.3d 1133 (2d. Cir. 1993) (no lower court opinion).

ISSUE ON APPEAL:

Appeal of defendant from an order of the district court denying a motion to dismiss the indictment for police misconduct and from the sentence imposed pursuant to a plea of guilty. Defendant contended that: (1) the district court's findings of fact following a hearing on the motion to dismiss were clearly erroneous; (2) the quantity of drugs used to determine the base offense level at sentencing was not established by a preponderance of the evidence; (3) the district court should have granted a downward departure due to extraordinary family circumstances; and (4) the two-level enhancement for an aggravated role in the offense was improper.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 12

15. Citations (continued):B. Short Summary Of Decision Reversed:

7) *U.S. v. McGregor* (continued)

HOLDING:

Affirmed in part, vacated and remanded for resentencing. The determinations of the district court with regard to: (1) the motion to dismiss; (2) the quantity of drugs used to calculate the base offense level; and (3) the downward departure, were upheld. The aggravated role in the offense determination, which was made based on a determination that the defendant acted as a "supervisor" of his wife, was improper because the defendant's wife was involved in only one transaction where the defendant asked her to hand over two packages of cocaine to two men who would arrive at the defendant's home. Judge Mahoney concurred in part and dissented in part, stating his view that the aggravated role enhancement was proper because the facts could not be meaningfully distinguished from *United States v. Jacobo*, 934 F.2d 411 (2d Cir. 1991).

8) *Klimek v. Horace Mann*, 817 F.Supp. 430 (D.Vt. 1993), vacated, 14 F.3d 185 (2d Cir. 1994).

ISSUE ON APPEAL:

Plaintiffs appealed district court's grant of summary judgment in favor of defendant and its denial of plaintiff's partial summary judgment motion.

HOLDING:

Vacated and remanded for further proceedings. The circuit court never reached the substantive issues presented on appeal because both parties' presupposition that judicial, rather than arbitral, resolution of the dispute over the defendant's obligation to provide insurance coverage was in error. Because the questions of coverage and damages were inextricably intertwined, the entire dispute was within the scope of the arbitration clause of the insurance contract. Accordingly the judgment of the district court was vacated and the case remanded with instructions to order arbitration as to the entire controversy.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 13

15. Citations (continued):B. Short Summary Of Decision Reversed:

- 9) *U.S. v. Sweet*, 25 F.3d 160 (2d Cir. 1994) (no lower court opinion).

ISSUE ON APPEAL:

Defendant appealed from the sentence imposed by the district court on the ground that: (1) a two-level upward adjustment for weapons was improper because there was no evidence the guns seized in the case were connected to the drug transactions; and (2) the inclusion of an additional three ounces of cocaine, which were negotiated for by an informant and a co-defendant, in the base offense level calculation was improper.

HOLDING:

Affirmed in part reversed in part. The upward adjustment for possession of a weapon in connection with drug trafficking was upheld. Inclusion of the three ounces sale of cocaine that was negotiated by a co-defendant but not completed was improper. Because the defendant maintained that he had nothing to do with the negotiated transaction, the district court was obligated to make findings as to the defendant's intent and ability to deliver the three ounces. Although the district court found that the defendant had the ability to deliver the three ounces, it made no finding about his intent to produce the three ounces. Accordingly, the calculation of the defendant's base offense level was reversed and the case remanded for resentencing.

C. Citations On Constitutional Issues:

- 1) *Chabad-Lubavitch v. City of Burlington*, 754 F.Supp. 372 (D.Vt. 1990), *aff'd*, 936 F.2d 109 (2d Cir. 1991), *cert. denied*, 112 S.Ct. 3026 (1992).
- \*2) *Glinka, et al. v. Abraham & Rose, et al.*, slip op., cv. dkt. no. 2:93-291 (D.Vt. 1994).
- 3) *McHugh v. University of Vermont*, 758 F.Supp. 945 (D.Vt. 1991), *aff'd*, 966 F.2d 67 (2d Cir. 1992).
- 4) *Gerrish Corp. v. Universal Underwriters*, 754 F.Supp. 358 (D.Vt. 1990), *aff'd* 947 F.2d 1023 (2d. Cir. 1991), *cert. denied* 112 S.Ct. 2939 (1992).

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 14

15. Citations (continued):C. Citations On Constitutional Issues:

- \*5) *Karacsonyi v. Harrington*, slip op. cv. dkt. no. 92-95 (D.Vt. 1994).
- \*6) *Belcarris v. Szarejko*, slip op. cv dkt. no. 92-251 (D.Vt. 1993).
- \*7) *Frank v. United States*, slip op. cv. dkt. no. 94-135 (D.Vt. 1994) (not yet published).

16. Public Office: State (chronologically) any public offices you have: held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was appointed Deputy Attorney General, Vermont Office of the Attorney General. The dates of service were 1969-1972.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
  - 1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
 

I did not serve as a clerk to a judge.
  - 2. whether you practiced alone, and if so, the addresses and dates;
 

I did not practice law as a sole practitioner.
  - 3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

<u>Position:</u>	<u>Name of Firm or Agency:</u>	<u>Address:</u>	<u>Dates:</u>
Attorney	Lyne Woodworth & Evarts	75 Federal St. Boston, MA (617) 523-6655	1965-1966

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 15

17. Legal Career:

## a.(3) (continued):

<u>Position:</u>	<u>Name of Firm or Agency:</u>	<u>Address:</u>	<u>Dates:</u>
Clerk/ Attorney	Yandell & Page	No longer in existence.	1966-1969
Deputy Atty. Gen.	VT Attorney General's Office	109 State St. Montpelier, VT 05609-1001	1969-1972
Assoc./ Partner	Langrock & Sperry	No longer in existence.	1972-1975
Partner	Langrock Sperry Parker & Stahl	No longer in existence.	1975-1982
Partner	Langrock Sperry Parker & Wool	Now Langrock Sperry & Wool 15 So. Pleasant St. Drawer 351 Middlebury, VT 05753-0351	1982-1990
District Judge	U.S. District Court	P.O. Box 392 Burlington, VT 05402-0392	1990-1991
Chief Judge	U.S. District Court	P.O. Box 392 Burlington, VT 05402-0392	1991 to present

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The legal practice at Lyne Woodworth & Evarts (1965 and 1966) involved mostly insurance company defense work and more specifically life insurance fraud cases.

The legal practice at Yandell & Page (1966 to 1969) was a general practice.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 16

17. Legal Career:

## b.(1) (continued):

During the time I was a Deputy Attorney General (1969 to 1972), I prosecuted various major felonies including several murders. I also wrote various opinions of the Attorney General for various State agencies. I was involved in civil litigation including an original jurisdiction case before the United States Supreme Court, *State of Vermont v. State of New York and International Paper Company*, 406 U.S. 186 (1972), referred to in the answer to question number 18.

My legal practice from 1972 through mid-1990 was that of a general practitioner doing most kinds of legal work with an emphasis on civil litigation and administrative litigation along with some criminal defense work in the first eight years. The civil litigation involved larger and more complex cases, but I did litigation of all types. Specifically, I handled personal injury litigation, including automobile accidents, products liability and medical malpractice cases. I also handled a number of cases involving contract disputes, lender liability and tort claims between various business entities. I defended an accountant professional malpractice case and a personal injury hang-gliding operation case, but most often represented plaintiffs rather than defendants. I also did domestic relations work, representing plaintiffs and defendants and men and women. There was virtually no bankruptcy and very little probate work. During the last ten years of my practice, criminal defense work was quite limited.

## b. 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As outlined in the first part of this question, I initially did some defense work (civil) and worked with other attorneys for large corporate clients while I practice law in Boston. Typical clients during the next three years (1966 to 1969) were individuals purchasing homes, a bank, a museum and other individuals with a variety of legal problems.

From 1969 to 1972 when I was a Deputy Attorney General, my client was the State of Vermont which I represented in most capacities as a prosecutor, a civil litigator and an advisor to State Agencies.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 17

17. Legal Career:

## b. (2) (continued):

From 1972 until about 1982, I represented various farmers with their numerous legal problems, including setting up business entities, litigating various disputes and obtaining permits. There were a number of individual clients for whom I did contract work, criminal defense work, some probate work, real estate transactions, divorces and various kinds of civil litigation. I set up a number of small corporations for individuals, who went into business and handled all of their varied legal affairs. Gradually, I began to represent more business oriented clients.

The most representative type of client during the last years of my legal practice were small business entities which had become involved in litigation of one sort or another. My specialization had been civil litigation, including personal injury, domestic relations and administrative work, especially in the environmental or land use area. I also represented some fairly large corporations, including Central Vermont Public Railway, Green Mountain Power Corporation and the Merchants Bank, in various discreet matters -- not as general counsel.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appeared in court frequently during most of my practice, although during the last two years I was involved in a major administrative matter which had me appearing before a Planning Commission and an Environmental Commission frequently with fewer appearances in court.

## 2. What percentage of these appearances was in:

- (a) federal courts: 10%
- (b) state courts of record: 70%
- (c) other courts: administrative bodies or arbitration - 20%

## 3. What percentage of your litigation was:

- (a) civil: 95% (including administrative)
- (b) criminal: 5%

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 18

17. Legal Career:

## c. (continued):

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have no records that permit me to state with certainty the number of cases which I have tried in courts of record to verdict or judgment. I would estimate about 30 (perhaps 100 if you count uncontested divorces) while in private practice, being associate counsel on five and sole or chief counsel on the remainder.

5. What percentage of these trials was:

- (a) jury: 60%  
(b) non-jury: 40%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
(c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

- 1) *State of Vermont and City of Burlington v. Central Vermont Railway, Inc.*, 153 Vt. 337, 571 A.2d 1128 (1989), cert. denied, 495 U.S. 931 (1990).

This was a declaratory judgment action in which the State of Vermont and City of Burlington challenged the nature of the title which the Central Vermont Railway holds in certain filled lands located on Lake Champlain in the Burlington, Vermont Harbor. The case eventually resulted in an articulation by the Vermont Supreme Court of its view of the "Public Trust Doctrine" and the nature of title granted under certain statutory grants from the State of Vermont.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 19

18. Litigation (continued):

- 1) *State of Vermont and City of Burlington v. Central Vermont Railway, Inc.* (continued):

A Petition for Certiorari to the United States Supreme Court was denied. I represented the Central Vermont Railway and acted as Chief Counsel of Record working with my partner Liam Murphy in presenting the case at trial and preparing and arguing it before the Vermont Supreme Court. I worked on and supervised preparation and filing of the brief to the United States Supreme Court.

The dates of the trial were January 7-16, 1987. The case was tried before the Chittenden Superior Court (docket number S966-84CnC), Chief Administrative Judge Stephen B. Martin presiding. Other counsel were:

## State of Vermont:

Wallace Malley  
Assistant Attorney General  
Office of the Attorney General  
Pavilion Office Building  
Montpelier, Vermont 05602  
(802) 828-3171

## City of Burlington:

John L. Franco, Jr.  
McNeil & Murray  
271 South Union Street  
Burlington, Vermont 05401  
(802) 863-4531.

- 2) *State of Vermont v. State of New York and International Paper Company*, 406 U.S. 186 (1972).

I represented the State of Vermont in this original jurisdiction case before the United States Supreme Court as Chief Counsel during the initial stages of the litigation. It was a case concerning the dumping of waste into Lake Champlain by the International Paper Company from its Ticonderoga, New York plant. The case also involved in part a boundary dispute between Vermont and New York as to whether the dumping of sludge in the lake was having the effect of altering the state line. The ultimate significance of the case which was eventually settled was to place more strict environmental controls on the International Paper Company Mill and provide certain funds for monitoring the health of Lake Champlain.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 20

18. Litigation (continued):

- 2) *State of Vermont v. State of New York and International Paper Company* (continued):

I prepared and filed the initial Complaint with the United States Supreme Court and argued the jurisdictional case successfully before that Court. I also prepared and filed pre-filed testimony and presented several witnesses before the Master appointed by the United States Supreme Court. Eventually, I left the Attorney General's Office while the case was still pending and others who worked with me on the case presented witnesses at trial and eventually settled the case.

The dates of the trial are now unknown and I do not have any records to reconstruct those dates. My best recollection is that I presented testimony for several weeks in early 1973 before R. Ammi Cutter, who was a retired Massachusetts Supreme Court Justice sitting as a United States Supreme Court Master. Co-counsel with me for the State of Vermont were:

John D. Hansen  
Opera House, 3rd Floor  
Rutland, Vermont 05702  
(802) 775-3700

Martin K. Miller  
Miller, Eggleston & Rosenberg  
150 So. Champlain Street  
Burlington, Vermont 05401  
(802) 864-0880

Honorable James L. Morse  
Vermont Supreme Court  
111 State Street  
Montpelier, Vermont 05601  
(802) 828-3276

## International Paper Company:

Taggart Whipple  
Richard Nolan  
James Benkard  
Davis, Polk & Wardwell  
450 Lexington Avenue  
New York, New York 11017  
(212) 450-4000



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 21

18. Litigation (continued):

- 2) *State of Vermont v. State of New York and International Paper Company* (continued):

Counsel for State of New York:

Philip Weinberg  
Assistant Attorney General  
Berle, Kars and Case  
45 Rockefeller Plaza  
New York, New York 10111  
(212) 765-1800.

- 3) *Hospitality Inns, Inc. et al. v. South Burlington R.I., Inc., et al.*, 153 Vt. 410, 571 A.2d (1989).

In this case, the Plaintiff claimed to have a contract to purchase the Ramada Inn Motel in South Burlington, Vermont, and sought to enjoin a closing on a purchase and sales agreement between the Defendant, South Burlington R.I., Inc. and my client, Defendant Bolton Valley, Inc. The trial court issued an injunction and ordered specific performance but was reversed on appeal by the Vermont Supreme Court. The primary significance to the clients of this case was the amount of money involved because the property became worth \$2,000,000 more than the initial purchase price. Its significance in law is that it affirms the necessity of shareholder approval at a duly constituted meeting prior to sale of assets of a corporation.

I represented the Defendants, Bolton Valley, Inc. and Ralph DesLaurier, and prepared and presented the case at trial. I did significant amounts of work on the brief before the Supreme Court. The case was argued before that Court by one of my partners, Alison J. Bell.

The dates of the trial were August 19, 20, 21 and 22, 1987. It was tried before the Chittenden Superior Court (docket number S782-87CnC), Judge Matthew I. Katz presiding. Other counsel were:

Hospitality Inns, Inc.:

Robert DiPalma  
Paul, Frank and Collins  
1 Church Street  
Burlington, Vermont 05401  
(802) 658-2311

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 22

18. Litigation (continued):

- 3) *Hospitality Inns, Inc. et al. v. South Burlington R.I., Inc., et al.* (continued):

Counsel for SBRI, Inc.:

Craig Weatherly  
Gravel & Shea  
76 St. Paul Street  
Burlington, Vermont 05401  
(802) 658-0220

Thomas Heilmann  
Heilmann, Ekman & Associates  
35 King Street  
Burlington, Vermont 05401  
(802) 864-4555.

- 4) *Irish and Atherton v. Vermont Gas Systems, et al.*  
(unreported).

In this case, I represented the two Plaintiffs who were both seriously injured in a gas explosion which occurred during the installation of a sewer line in St. Albans, Vermont. The substance of the claim against the gas company was that it failed to properly maintain a gas main which leaked gas into the sewer system where the Plaintiffs were working. A claim against a laser beam alignment manufacturer was based on failure to warn of the potential for sparks to be generated in a potentially dangerous atmosphere. One Plaintiff settled after several days of trial (March 17-24, 1986). The other Plaintiff obtained a judgment on liability alone, but settled after two additional days of trial on the damages portion of the case. I tried the case throughout with some assistance from my partner William Miller and some from my partner Peter Langrock. The eventual value of the settlement was approximately \$900,000 (structured) which made the case significant.

The case was tried to a jury before the Franklin Superior Court (docket number S143-82Fc) in St. Albans, Vermont, then-Superior Court Judge James L. Morse presiding.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 23

18. Litigation (continued):

- 4) *Irish and Atherton v. Vermont Gas Systems, et al.*  
(continued):

Counsel for the Defendants:

Vermont Gas Systems:

Joseph Badgewick  
Ryan Smith & Carbine, Ltd.  
98 Merchants Row  
Rutland, Vermont 05702  
(802) 773-3344

Laser Alignment Company:

John Sartore  
Robert DiPalma  
Paul, Frank and Collins  
1 Church Street  
Burlington, Vermont 05401  
(802) 658-2311

Hill-Martin Corp.:

Douglas Pierson  
Pierson, Wadhams, Quinn & Yates  
253 South Union Street  
Burlington, Vermont 05401  
(802) 863-2888.

- 5) *In re Estate of Pearl S. Walsh a/k/a Pearl S. Buck, 133 Vt. 429, 341 A.2d 706 (1975).*

In this case, my partner Peter F. Langrock and I represented the children of the author Pearl S. Buck, who died in Vermont after executing a will which disinherited her children and poured into a trust in favor of an employee and companion of hers. The case received substantial press coverage because of its nature and the fact that it was the Pearl S. Buck Estate. A jury at the trial court level set aside the will and the Vermont Supreme Court affirmed that decision.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 24

18. Litigation (continued):

- 5) *In re Estate of Pearl S. Walsh a/k/a Pearl S. Buck*  
(continued):

The case was significant because setting aside the will then permitted us to successfully attack the trust and recover substantial assets including copyrights to a number of literary works, which continue to be managed by the children. I was involved with all aspects of the case including conducting discovery and presenting the case at trial. I also prepared the brief on appeal and successfully argued the case to the Vermont Supreme Court.

The case was tried in the Rutland Superior Court (docket number C40-73Rm), for approximately one week during the summer of 1974, then-Superior Court Judge Franklin S. Billings, Jr. presiding. Counsel for the Estate was Frederick Pope. Mr. Pope apparently no longer practices law in Vermont, and I have not been able to track down his location.

- 6) *In re Maple Tree Place Associates.*

This case was an application for permits to construct a 477,000 square foot shopping mall in Williston, Vermont. The substance of this case before the Williston Planning Commission and District Environmental Commission was to determine whether this project could be constructed without adverse impact on air quality, water quality, highways, public utilities, ability of any municipality to provide municipal services, and aesthetics, as well as to evaluate in planning documents and impacts of growth.

The proceeding was conducted under the Vermont Rules of Evidence, and there were numerous parties admitted, each of whom contested various criteria in the permit process.

I presented evidence during 16 local, and 12 State, hearings, which were held over the course of a year and one-half. While I was still handling the case, there was one trip to the Vermont Supreme Court by way of an interlocutory appeal by opponents of the project from an order of the Vermont Environmental Board, which appeal was dismissed. *In re Maple Tree Place*, 151 Vt. 331, 560 A.2d 382 (1989).



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 25

18. Litigation (continued):6) *In re Maple Tree Place Associates* (continued):

Later in the proceedings, there were two additional appeals to the Vermont Supreme Court. I briefed each of them, but they were argued after I left the law firm to become a United States District Judge. The first of the appeals was from the Chittenden Superior Court (docket number S1577-89CnC) and involved a procedural matter having to do with the Vermont Administrative Procedure Act. *In re Maple Tree Place*, 156 Vt. 494, 594 A.2d 404 (1991). The second appeal was also from the Chittenden Superior Court (docket number S1578-89CnC), on appeal from the Williston Planning Commission, and affirmed the court's decision upholding the Town of Williston's allocation of sewer capacity to the shopping mall. *Williston Citizens for Responsible Growth v. Maple Tree Place Associates and Town of Williston*, 156 Vt. 560, 593 A.2d 469 (1991).

The cases were followed closely by the press and reported in all aspects in the media. One aspect of the case was that a partner in Maple Tree Place Associates was an individual named Robert J. Congel, a New York resident who had been involved in the development of a number of shopping malls under the name Pyramid and in so doing had achieved notoriety.

I represented the applicant, a Vermont partnership named Maple Tree Place Associates, along with two of my partners, Mark L. Sperry and Alison J. Bell. I was involved with all aspects of the preparation and presentation of evidence and various filings in the case. The matter was before the Williston Planning Commission, George Gereke, Chair, and the District Environmental Commission, which was presided over by Patricia Gable, an attorney appointed to chair the Commission. She eventually departed and the replacement chair was Robert Opel. Other counsel involved in the case were as follows:

## State of Vermont:

Gerald R. Tarrant  
Tarrant & Marks  
28 Main Street  
Montpelier, Vermont 05601  
(802) 223-1112

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 26

18. Litigation (continued):6) *In re Maple Tree Place Associates* (continued):

Counsel involved in the case were:

State of Vermont:

John Dunleavy  
 Vermont Agency/Transportation  
 133 State Street  
 Montpelier, Vermont 05633  
 (802) 828-2831

City of Burlington:

Francis Murray  
 Two Bedford Green  
 South Burlington, Vermont 05403  
 (802) 862-3174

Citizens for Responsible Growth:

Harvey Carter  
 P.O. Box 77  
 Heath, Massachusetts 01346-0077  
 (413) 337-5511

Town of Williston:

Richard Spokes  
 Spokes, Foley & Peterson  
 239 South Union Street  
 Burlington, Vermont 05401  
 (802) 862-6451

Towns of So. Burlington and Shelburne:

Steven F. Stitzel  
 Stitzel & Page  
 171 Battery Street  
 Burlington, Vermont 05401-5210  
 (802) 660-2555

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 27

18. Litigation (continued):6) *In re Maple Tree Place Associates* (continued):

Counsel for City of Winooski:

William E. Wargo  
108 Cherry Street  
Burlington, Vermont 05401-3818  
(802) 863-7281.

7) *Green Mountain Power Corp. v. General Electric Corp.*,  
496 F.Supp. 169 (D. Vt. 1980).

I represented a local electric distribution company in this action against General Electric Corporation concerning faulty repairs to the Vermont Yankee Nuclear Power Supply Plant located in Vernon, Vermont. Certain welding done to one of the power plant's safety systems was faulty and as a result the plant shut down on an unscheduled basis to effect repairs. Green Mountain Power, the Plaintiff, had a supply contract and because of the shut down had to purchase substitute power at a greatly increased price.

The case proceeded over approximately two years, from 1978 to 1980, through the discovery phase and Plaintiff survived a motion for summary judgment. However, the matter was discontinued prior to trial because of a change in management at Green Mountain Power.

The holding in favor of the Plaintiff at the summary judgment stage was significant because it found a potential for liability in negligence against a third party (General Electric) in circumstances where there had been no physical harm or personal injury to the Plaintiff. The case also involved a substantial amount of money and a great deal of technical work given the nature of the alleged damages.

I conducted all of the discovery alone, or with my then partner Susan Humphrey (now Eaton), prepared the memorandum of law in connection with the summary judgment motion and successfully argued that motion. The case was disposed of prior to trial by Plaintiff's discontinuance.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 28

18. Litigation (continued):

- 7) *Green Mountain Power Corp. v. General Electric Corp.*  
(continued):

The case was before the United States District Court for the District of Vermont, Judge James S. Holden presiding.

Counsel for Defendant General Electric Corp.:

Clarke Gravel  
Robert J. Bemley  
Gravel & Shea  
76 St. Paul Street  
Burlington, Vermont 05401  
(802) 658-0220.

- 8) *Fairdale Farms v. Yankee Milk and RCMA*, 1980-1 Trade Cas. (CCH) P 63029 (D.Vt. 1979), 635 F.2d 1037 (2d Cir. 1980), cert. denied, 454 U.S. 818 (1981).

In this case, I represented the Plaintiff Fairdale Farms, Inc., a local dairy located in Bennington, Vermont. Fairdale obtained its milk supply from various farmers in the vicinity. A number of those farmers became members of the Yankee Milk Cooperative which was a member of RCMA, an association of milk cooperatives operating in the northeast. As a result of disputes between the Plaintiff and the Cooperative concerning imposition of premium prices for milk, the Cooperative directed its member farmers not to supply milk to Fairdale Farms and in response Fairdale obtained its supply elsewhere.

Fairdale alleged that Yankee and RCMA had monopolized its supply market in violation of antitrust laws and employed predatory practices in its attempts to force Fairdale to pay over-order premiums for its milk supply. The case was a significant test of the so called "Capper-Volstead Act" exemption to the Sherman Act, raising the issue of whether dairy cooperatives were subject to or exempt from the anti-trust laws. The trial court ruled on a motion for summary judgment after a lengthy period of discovery that the exemption did not apply and Plaintiff could proceed to trial. That ruling on appeal was affirmed in part and vacated in part by the United States Court of Appeals for the Second Circuit and a Petition for Certiorari to the United States Supreme Court was not granted.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 29

18. Litigation (continued):8) *Fairdale Farms v. Yankee Milk and RCMA* (continued):

I was in charge of the litigation, working primarily with my partner Susan Eaton, and participated fully in all stages of discovery, preparation of memoranda to the trial court and presentation of arguments on the summary judgment motion at the trial and appellate levels. The case was in the United States District Court for the District of Vermont, 1980-1 Trade Cas. (CCB), ¶63,029 (D. Vt. 1979), Judge Albert W. Coffrin presiding, and later before the United States Court of Appeals for the Second Circuit. The case did not go to trial so there were no trial dates.

Counsel for other parties:

Yankee Milk Cooperative:

Frederick Conard  
Shipman & Goodwin  
799 Main Street  
Hartford, Connecticut 06103  
(203) 549-4770

RCMA:

David P. O'Hara  
Bond, Schoeneck & King  
One Lincoln Center  
Syracuse, New York 13202  
(315) 422-0121.

9) *In re Rotax*, 139 Vt. 390, 429 A.2d 1304 (1981).

This was a will challenge wherein certain of the heirs, who were disinherited in Mrs. Rotax's will, challenged the will on the basis of duress and undue influence. I represented two sons and a granddaughter, who were given the most significant asset of the Estate, which was an operating dairy farm in Addison County.

The particular significance of this case to me was that three individuals, who had operated a farm all of their lives, were able to continue to do so and to keep the farm in operation rather than forcing a sale for distribution of cash among several other children.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 30

18. Litigation (continued):9) *In re Rotax* (continued):

I handled all stages of the litigation from the initial Probate Court hearing through the de novo appellate trial at the Superior Court level, which resulted in a jury declaring that the will should stand. That verdict was upheld by the Vermont Supreme Court. The dates of the trial were January 2-4, 1980. The case was heard before the Addison Superior Court (docket number S12-77Ac), with then-Superior Court Judge Wynn Underwood presiding.

Counsel for other parties were:

William H. Meub  
Keyser, Crowley, Meub, Layden,  
Kulig & Sullivan  
29 South Main Street  
Rutland, Vermont 05701  
(802) 775-0242

David A. Nicholson  
34 Patchen Road  
South Burlington, Vermont 05403  
(802) 658-2255.

10) *Wright Farm Construction, Inc. v. Juanita Kreps, Secretary of Commerce*, 444 Supp. 1023 (D. Vt. 1977).

The Plaintiff (my client) claimed against the Defendant Secretary of Commerce that the minority business enterprises provision in government contracts foreclosed Plaintiff's ability to bid on any government work. The United States District Court struck the MBE requirement as it pertained to Plaintiff, permitting it to bid on governmental jobs. The case was significant because it saved Plaintiff from economic ruin (almost all work it did contained an MBE requirement).

I handled all phases of the litigation. The case was decided on December 14, 1977, after one day of trial which immediately preceded the decision. The Judge was Albert W. Coffrin.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 31

18. Litigation (continued):

- 10) *Wright Farm Construction, Inc. v. Juanita Kreps, Secretary of Commerce* (continued):

Counsel for Department of Commerce:

Gerald S. Hartman  
Anderson, Kill, Olick  
& Oshinsky  
Suite 7500  
2000 Pennsylvania Avenue  
Washington, D.C. 20006  
(202) 728-3100.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. I was the Chair of the Vermont Law Enforcement Training Council from 1973 to 1979. Although the primary role of the Council was to provide training for Vermont State Police, sheriffs and local law enforcement agencies, I, as Chair, always thought the most important function I served was to bring those disparate sections of the law enforcement community together. Prior to the creation of the Council, turf battles were frequent and undermined the various agencies' ability to effectively deliver services to the public.

I believe that my role as Chair of the Council provided a forum for all levels of law enforcement to exchange ideas and develop the means of cooperating together to enforce the law.

2. I was appointed as attorney for the public in an investigation conducted by the Vermont Public Service Board into the shutdown of the Vermont Yankee Nuclear Power Plant as a result of the discovery of certain deficiencies in one of the safety systems. That investigation involved the retention of and preparation of testimony by technical experts at a lengthy hearing before the Vermont Public Service Board. I believe that investigation and hearing occurred in 1976. The hearing was designed to, and did, air on matters relating to the shutdown incident. A report of the Vermont Public Service Board issued and no formal action was taken.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 32

19. Legal Activities (continued):

3. I was appointed as attorney for the public to the Public Service Board in connection with a rate case potentially involving many millions of dollars and presented pre-filed and live testimony to the Vermont Public Service Board during extensive hearings in the fall of 1977. The result was that a rate increase was granted which was less than that sought by the company. Also, various energy conservation measures were adopted, and I think more fair rate distribution among various customer classes occurred.

4. In 1979 and early 1980, I was counsel to the Keyser Commission, which was a blue ribbon commission appointed by then-Vermont Governor Snelling to investigate circumstances of possible corruption in the Vermont State Police concerning allegations that certain police officers were the recipients of stolen tools from a tool manufacturing company in Vermont. A State Police Officer committed suicide in connection with that matter. I personally conducted almost all of the investigation and prepared a 105 page written report of that Commission to the Governor. The report was submitted to the Governor and released to the public in April 1980. The report indicated that there were isolated incidents of wrongdoing which were eventually addressed in disciplinary proceedings. There was no widespread finding of corruption and no further action was taken.

5. I served as the Chair of the Vermont Bar Association Special Committee on the Reform of the Judiciary during the years 1988 and 1989. That Committee was composed of a number of judges and attorneys who worked together to attempt to address numerous problems with the State judicial system. Specifically, the system had historically developed in ways that left overlapping jurisdiction in various courts and responsibility for facilities in different levels of government. There were confused lines of responsibility for hiring, firing and disciplining various court personnel, all of which resulted in conflict that detracted from the central mission of the court system, namely dispute resolution. The Committee ultimately proposed legislation designed to reform the judiciary, which legislation was adopted in substantial form by the 1990 Legislature by creating a new family court and otherwise integrating the system.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 33

19. Legal Activities (continued):

6. As a member of the Advisory Committee on the Civil Justice Reform Act of 1990, I attended a series of meetings from 1991 until the present. They resulted in the preparation of a Report and Plan and amendment of the Local Rules of this Court with a view to reducing cost and delay in the United States District Court for the District of Vermont. A primary recommendation was adoption of an Early Neutral Evaluation Program, which is presently being set up. I am involved in the training of evaluators and will be promoting the Program through the Vermont Bar Association.

7. Since last fall, I have been a member of the Judicial Branch Committee of the Judicial Conference. I have attended several full Committee meetings addressing various issues having to do with matters affecting the judiciary. They include, without limitation, travel regulations, survivorship benefits and COLAs. I also have worked on a sub-committee of the Judicial Branch Committee which has concerned itself with issues of judicial independence, the result of which will be a symposium to be presented in the *Mercer Law Review*.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 34

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.  
  
NONE.
2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Because I left my prior law firm in August 1990, there is very little potential for conflicts regarding matters that were pending in that office while I was a member of the firm. Most such matters have long since been resolved and are unlikely to come before the Court on which I presently sit, and the court for which I hope to be confirmed. In the event that any such matter does arise, I am certain that I will recall from memory the name of the case, or the litigant, or some other factor that will alert me to the necessity of recusal. Of course, in that event, I would recuse. In addition, I would be disqualified from sitting on any case presently pending before me in the District of Vermont, if such a case were appealed to the United States Court of Appeals for the Second Circuit and I were a member of that Court.

The procedure I plan to follow is to file a list of all cases presently pending before me on the District Court level with the appellate court clerk's office. The list would be checked against any appeals from this District so that I would not be assigned any of those cases in the event that I become an appellate judge.

There are no other categories of litigation which I believe are likely to present potential conflicts-of-interest. In any event, I will resolve any conflicts, or potential conflicts, in accordance with the Code of Judicial Conduct.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 35

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

NO.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

See attached copy of Financial Disclosure Report (Tab A).

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

See attached Financial Statement (Tab B).

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

NO.

I have made some nominal contributions to political candidates over the years.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 36

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I participated in the Vermont Lawyers Project which handles divorces for persons who are unable to pay a fee for the service. I have no records of the amount of time invested in that kind of activity. However, I participated for several years, prior to my appointment as a United States District Judge, usually handling one or two cases per year, which I expect would have involved about 20 hours per year of my time.

In addition, there were numerous instances where clients that I represented either could not pay in full after an initial retainer or could not pay at all and I proceeded with their representation. There is no way to reconstruct a specific record of those instances at this time.

In 1987 and 1988, I handled an assigned criminal defense of a serious aggravated assault to which I devoted 114 hours at the rate of \$25 per hour whereas my normal hourly rate at the time was \$125.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I was a member of the Ethan Allen Club from 1975 until my resignation in 1988. Subsequent to my resignation, and I believe because of that resignation plus others, along with other pressures, the Club voted to open its membership to women. I do not believe that the Club now discriminates in any way, but I have not re-joined primarily for financial reasons.



## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 37

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

YES.

There was a Selection Committee appointed by Senators Patrick J. Leahy and James M. Jeffords and the Vermont Bar Association. The Committee was comprised of nine members, three of whom were appointed by each of the Senators and the Bar Association. It is my understanding that the Committee reported favorably upon my nomination, but I am not privy to any details in that regard.

My experience in this process is as follows. First, I let my interest in the position be known, speaking personally with Senator Leahy in late summer 1992. I then submitted a Questionnaire For Candidates For Judicial Office to the Committee. Thereafter, I was interviewed by the Committee on December 8, 1992.

After Senator Leahy's first choice for the position (Attorney William B. Gray) died of cancer on March 22, 1994, Senator Leahy contacted me to see if I remained interested in the position. He conducted an interview with me personally on May 6, 1994. Subsequently, Senator Leahy informed me he would be submitting my name to President Clinton for his consideration.

Thereafter, on July 28, 1994, I was interviewed by representatives of the White House counsel and the United States Department of Justice. On August 19, 1994, I was interviewed by Judah Best, Esq., a representative of the American Bar Association, and on August 23, 1994 by an Agent of the FBI in connection with its investigation.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

NO.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER  
PAGE 38

5. Please discuss you views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

My view is that the principle of separation of powers needs to be carefully maintained in order to preserve the careful balance set forth in the Constitution wherein the roles of the various branches of Government are defined. The appropriate role of a federal court, in my view, is to resolve those cases which are properly brought before the court and to resist the temptation to expand remedies beyond those which are necessary to resolve the case in point.

Standing and ripeness are critical concepts to be applied in order to limit the powers exercised by Article III judges to those appropriate to the judicial role as set forth in Article III of the Constitution of the United States of America. Specifically, the judiciary is empowered to deal with and resolve cases and controversies and should do so. Additionally, the concept of *stare decisis* provides a limitation on the kind of loosening of jurisdictional requirements suggested by the question.

QUESTIONNAIRE FOR JUDICIAL NOMINEES

FRED I. PARKER

PAGE 39

5. (continued):

If there is a tendency by the judiciary to impose itself upon other institutions through administration and continuing oversight, my own view is that any court contemplating such an extensive remedy should proceed with extreme caution.

## NET WORTH

JULY 31, 1994

[illegible]



QUESTIONNAIRE FOR JUDICIAL NOMINEES  
FRED I. PARKER

SCHEDULE TO FINANCIAL STATEMENT  
NET WORTH

Assets:

Listed Securities:	
Smith Barney Shearson, Appreciation Fund A .....	\$ 54,750.72
Unlisted Securities:	
IDS Symphony Annuity Contact .....	\$ 26,207.07
Real Estate Owned:	
Former Residence, Weybridge, VT (Spouse's Name) .....	\$ 275,000.00
Present Residence, Burlington, VT (Joint With Spouse) .....	\$ 315,000.00

Liabilities:

Real Estate Mortgages:	
Former Residence, Weybridge, VT ....	\$ 139,000.00
Present Residence, Burlington, VT ..	\$ 315,000.00

Report Required by the Ethics  
 Reform Act of 1989, Pub. L. No.  
 101-594, November 30, 1989  
 18 U.S.C.A. App. 6, 201-212

# FINANCIAL DISCLOSURE REPORT NOMINATION

1. Person Reporting (Last name, first, middle initial) <b>PARKER, FRED I.</b>		2. Court or Organization <b>U.S. Court of Appeals</b>		3. Date of Report <b>08/30/94</b>	
4. Title (Article III Judges indicate active or senior status; Appellate Judges indicate full- or part-time) <b>Circuit Judge</b>		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <b>08/25/94</b> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final		6. Reporting Period <b>01/01/93 - 07/31/94</b>	
7. Chambers or Office Address <b>U.S. DISTRICT COURT P.O. BOX 392 BURLINGTON, VT 05402-0392</b>		8. On the basis of the information contained in this Report and any modifications pertaining thereto, it is, in my opinion, in compliance with applicable laws and regulations. Reviewing Officer _____ Date _____			

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION	NAME OF ORGANIZATION/ENTITY
<input type="checkbox"/> NONE (No reportable positions)	
<input type="checkbox"/> NONE	<input type="checkbox"/> NONE

## I. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

DATE	PARTIES AND TERMS
<input type="checkbox"/> NONE (No reportable agreements)	
<input type="checkbox"/> NONE	<input type="checkbox"/> NONE

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE	SOURCE AND TYPE	GROSS INCOME (yours, not spouse's)
<input type="checkbox"/> NONE (No reportable non-investment income)		
1 <u>1993-94</u>	<u>rent income/apartment in home (acquired in 11/93)</u>	<u>\$ 7200.00</u>
2		\$
3		\$
4		\$
5		\$

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
PARKER, FRED I.Date of Report  
08/30/94

## V. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

SOURCEDESCRIPTION☐**NONE** (No such reportable reimbursements or gifts)

1

EXEMPTNONE

2

3

4

5

6

7

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐**NONE** (No such reportable gifts)

1

EXEMPTNONE

\$ 0.00

2

\$

3

\$

4

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☐**NONE** (No reportable liabilities)

1

Merchants Bank, Burlington, VTmortgage on prior residence (J)M

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less    S = \$15,001 - \$50,000    I = \$50,001 - \$100,000    M = \$100,001 to \$250,000  
 E = \$250,001 - \$500,000    O = \$500,001 - \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
PARKER, FRED I.Date of Report  
08/30/94

## VII. Page 1 INVESTMENTS and TRUSTS -- income, value, transactions (Includes those of spouse and dependent children; See pp. 18-26 of Instructions.)

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
	Am. 1 Code (A-E)	Type (F-Y, Div., Rent or Int.)	Value Code (J-W)	Value Method Code (X-Y)	Date: Month Day	(2) Value Code (J-W)	(3) Gain Code (A-E)	(4) Identity of buyer/seller (if private transaction)	(5)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Americal Associates	A	Int	J	W					
2 IDS Annuity	D	Int	M	T					
3 Shearson - Money Management	A	Div	M	T					
4 DelCap Mutual	A	None	K	T					
5 Shearson Fund IRA		None	L	T					
6 Merchants Bank (J)*	A	Int	J	T				*Burlington, VT	
7 VT State Bonds (S)	A	None	L	T					
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less R=\$15,001 to \$50,000		B=\$1,001 to \$2,500 F=\$50,001 to \$100,000		C=\$2,501 to \$5,000 G=\$100,001 to \$1,000,000		D=\$5,001 to \$15,000 E=More than \$1,000,000		
2 Value Codes: (See Col. C1 & D2)	J=\$15,000 or less N=\$250,001 to \$500,000		L=\$15,001 to \$50,000 O=\$50,001 to \$1,000,000		M=\$50,001 to \$100,000 P=More than \$1,000,000		K=\$100,001 to \$250,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market		



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
PARKER, FRED I.	08/30/94

III. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

PART VII: The Merchants Bank account is a savings account opened in 1993.

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
PARKER, FRED I.Date of Report  
08/30/94

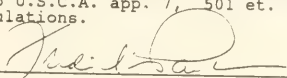
## A. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature



Date

9/6/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Helen Willey Gillmor

Helen Patricia Willey, maiden name

2. Address: List current place of residence and office address(es).

4970 Kolohala Street  
Honolulu, Hawaii 96816

Gillmor & Gillmor  
Attorneys at Law  
A Law Corporation  
Suite 2050, Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813

3. Date and place of birth.

October 9, 1942, Syracuse, New York.

4. Marital status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to John P. Gillmor, attorney

Gillmor & Gillmor  
Attorneys at Law  
A Law Corporation  
Suite 2050, Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Queen's College of the City University of New York, 1960-65  
B.A. in Political Science, 1965

Boston University School of Law, 1965-68  
LL.B., Magna Cum Laude, 1968

University of Hawaii, 1974  
art courses

University of Hawaii, Small Business Management Program,  
1985-86  
courses in accounting/tax/business

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1965, January to August. During college and after graduation in January, 1965 I worked at Lorraine Murphy's Restaurant as a waitress. I worked there through the summer of 1965 and for some portion of the summer of 1967.

Lorraine Murphy's Restaurant  
Manhasset, New York

1966, June to August. I worked as a waitress at the Coonamesset Inn on Cape Cod during the summer.

Coonamesset Inn  
Falmouth, Cape Cod  
Massachusetts

1967, June to August. I had my first law related job as a law clerk at the law firm of Breed, Abbott & Morgan.

Breed, Abbott & Morgan  
Citicorp Center  
153 East 53rd Street  
New York, New York 10022-4658

1981 to 1993. I served as an officer and director in Penobscot Trading Company, Limited, a small family owned company that trades in oriental rugs and antiques.

1968 to February 1969. After graduation from law school, I worked at Ropes & Gray, a law firm in Boston, Massachusetts.

Ropes & Gray  
One International Place  
Boston, Massachusetts

February 1969 to August, 1969. I performed legal work for the El Paso Real Estate Investment Trust, now known as Property Trust of America, in El Paso, Texas.

Suite 610, Coronado Tower Building  
--6006 North Mesa Avenue



El Paso, Texas 79912

October, 1969 to August, 1970. I was a lecturer in constitutional law to Korean judges and prosecutors at the International Legal Center in Seoul, South Korea, under a program funded by the United States Agency for International Development.

September, 1970 to December, 1970. My husband and I assisted my husband's father with his law practice.

Law Offices of Alexander R. Gillmor  
15 Elm Street  
Camden, Maine 04843  
[Alexander R. Gillmor is deceased (1975)]

February, 1971 to February, 1972. I was an associate at Moore, Torkildson & Schultze, now known as Torkildson Katz Jossem Fonseca Jaffe Moore & Hetherington.

Torkildson Katz Jossem Fonseca Jaffe  
Moore & Hetherington  
1500 Amfac Tower  
700 Bishop Street  
Honolulu, Hawaii 96813

February, 1972 to September, 1972. I served as a Law Clerk to Chief Justice William S. Richardson of the Hawaii State Supreme Court.

Supreme Court of the State of Hawaii  
P. O. Box 2560  
Honolulu, Hawaii 96822

September, 1972 to February, 1974. I served as a Deputy Public Defender in the Office of the Public Defender, State of Hawaii.

Office of the Public Defender  
1130 Nimitz Highway, Suite A135  
Honolulu, Hawaii 96817

February, 1974 to April, 1977. During this period I maintained a limited private practice out of my home at 46-318 Haiku Road, #24, Kaneohe, Hawaii 96744, and served as a Lecturer in Criminal Law at the University of Hawaii School of Law (Spring Semester 1975) and once again as a Law Clerk to Chief Justice William S. Richardson (Summer of 1975).

University of Hawaii  
The William S. Richardson School of Law  
2515 Dole Street

Honolulu, Hawaii 96822

May of 1977 to May, 1983 I was appointed as a per diem District Court Judge assigned to the Family Court of the First Circuit of the State of Hawaii for six years.

Family Court of the First Circuit  
State of Hawaii  
Kaahumanu Hale  
777 Punchbowl Street  
Honolulu, Hawaii 96813

May, 1983 to May, 1985. I was reappointed a per diem Judge and I was assigned to the District Court of the First Circuit of the State of Hawaii for two years.

District Court of the First Circuit  
State of Hawaii  
Kauikaeouli Building  
1111 Alakea Street  
Honolulu, Hawaii 96813

May, 1985 to present. I joined my husband in the private practice of law forming Gillmor & Gillmor, Attorneys at Law, A Law Corporation. My husband, John, left our firm to work at another law firm from September, 1987 to September, 1992. During the period of his practice elsewhere the firm was known as The Law Offices of Helen Gillmor. The address and telephone number have remained the same throughout:

2050 Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
(808)536-0002.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not served in any military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

1. While in law school I was recognized with scholarship support in my second and third years (1966-68). One scholarship that I recall receiving was the Sadie Lipner Schulman Award established for deserving female law school students by Judge Schulman, a graduate of Boston University

School of Law.

2. While teaching Korean judges and prosecutors American law in Seoul, Korea under a United States Agency for International Development program, I was made a member of the International Legal Society of Korea on December 29, 1969.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Disciplinary Board of the Hawaii Supreme Court:  
("Disciplinary Board")

(The entity charged with enforcement of the ethical rules for attorneys.)

1974 to 06/93 - Member (there are 18 Board Members, 7 lay members and 11 attorney members)

11/74 to 09/76 - Secretary

07/88 to 06/90 - Vice-Chairperson

07/90 to 11/92 - Chairperson

Hawaii State Bar Association ("HSBA"):

1981 - Treasurer

1983 - Vice-President

1990-91 - Director. Coordinated the cooperation of the HSBA and the Disciplinary Board during the transition from a voluntary Bar to a mandatory Bar (while I served as Chairperson of the Disciplinary Board).

Young Lawyers Section of the HSBA:

1972 - Chairperson, Community Relations

1973 - Section representative to the Awards of Achievement Committee of the American Bar Association convention held in Honolulu

Hawaii Bar Journal of the HSBA:

1972-1977 - Editorial Board

Family Law Section of the HSBA:

1977 to present - member

Board of Bar Examiners of the Hawaii Supreme Court:

Member from 1975 to 1990.

Task Force on Secure Custody (for Juvenile Offenders):

Chairperson from 1979 to 1980.

The task force was formed by the Chief Judge of the Family Court. The task force coordinated input from agencies and interested groups and produced a report that led to major changes in the secure custody procedures and facility for minors.

Committee to Plan a Family Court Center for the island of Oahu

Chairperson from 1982 to 1983.

Hawaii Women Lawyers:

Member, 1976 to present.

Hawaii Women's Legal Foundation:

Member, 1986 to present  
Director, 1993-95

Public Disputes Mediation Panel (sponsored by the Hawaii State Judiciary Alternate Dispute Resolution Center)

Member, 1987 to present.

Friends of the Judiciary History Center

Director, 1983 to present.

Citizen's Conference on the Administration of Justice Steering Committee (1972).

1991 Hawaii Judicial Foresight Congress  
Facilitator (January 1991)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

As Chairperson of the Disciplinary Board of the Hawaii Supreme Court I testified before the Senate of the Hawaii State Legislature on February 25, 1992 (the testimony, entitled Testimony of Helen Gillmor, Chairperson Disciplinary Board of the Hawaii Supreme Court, Regarding Senate Bill 2330 Relating to the Uniform Information Practices Act, is enclosed).



I am a member of the Friends of the Judiciary History Center, the Friends of the Hawaii Opera Theatre, and the Friends of the Hawaii Theatre Center. All three organizations actively lobby for funds before public bodies but I have not personally participated in any lobbying activities on behalf of these organizations.

Other Memberships:

Waiiokeola Congregational Church  
Board of Directors of the Hawaii Ballet Theatre  
Executive Committee of the Boston University School of Law  
Alumni Association  
University of Hawaii at Manoa, College of Arts and Sciences  
Rainbow Advantage Program, Mentor  
Democratic Party of the State of Hawaii

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Commonwealth of Massachusetts, September 24, 1969  
State of Hawaii, October 19, 1971  
United States District Court for the District of Hawaii,  
October 19, 1971

12. Published Writings: List the titles, publishers, and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Authored:

1. Federal Power Commission Jurisdiction Over Wholesale Sales Allowable if Made to a Member of an Integrated Interstate Power Pool, 46 Boston University Law Review 552 (1966)

2. A Family Court Center for Oahu, A Report and Recommendation by the Committee for a Family Court Center for Oahu, January, 1983.

Edited Works:

3. Leuteneker, Tom C., Interlocutory and Final Appeals in Hawaii. IX:2:45 Summer Hawaii Bar Journal, 1972.

4. Goss, Roy, Jr., A Peanut Can is My Ashtray.  
XI:4:106 Winter Hawaii Bar Journal, 1975.

5. Christensen, Steven K., "Totem Pole" Hearsay and the Search Warrant Affidavit. XII:4:3 Winter Hawaii Bar Journal, 1977.

I served as a member of the editorial board of the Hawaii Bar Journal of the Hawaii Bar Association from 1972 through 1977.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. Last examination: April 27, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

May of 1977 to April, 1983. I was appointed by Chief Justice William S. Richardson as a per diem District Court Judge assigned to the Family Court of the First Circuit of the State of Hawaii for six years. Jurisdiction of the Family Court encompasses misdemeanors and felonies committed by juveniles, divorces, child support establishment and enforcement, adoption and paternity, child abuse and neglect, mental health, civil restraining orders for domestic violence as well as criminal proceedings against adults where the victim is a family member.

May, 1983 to April, 1985. I was reappointed a per diem Judge by Chief Justice Herman T. F. Lum and I transferred to the District Court of the First Circuit of the State of Hawaii. In District Court I heard motions and trials for criminal misdemeanors, traffic and civil matters and conducted preliminary hearings for felony charges.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) During my eight years as a judge I rendered oral decisions in the vast majority of cases. I include decisions in eight (8) matrimonial actions. These opinions are forwarded to provide a sample of routine decisions I made in matrimonial actions. It was and is the practice in the misdemeanor and felony criminal matters I handled in Family Court and State District Court to render an oral rather than a written decision.

The decisions included are:

1. Alice Ruth Keliinoi v. Gordon Samuel Keliinoi, FC-D No. 82240, in the Family Court of the First Circuit, State of Hawaii, Decision and Order, July 14, 1977
2. Daniel Mervyn Oeser v. Clara Marie Oeser, FC-D No. 98665, in the Family Court of the First Circuit, State of Hawaii, Decision, August 9, 1977
3. Mary Nancy Pacheco v. Joseph Mason Pacheco, FC-D No. 85232, in the Family Court of the First Circuit, State of Hawaii, Decision and Order, August 12, 1977.
4. Pacheco v. Pacheco, Ibid., Supplemental Decision and Order, February 15, 1978.
5. Juanita P. Kaonohi v. Melton K. Kaonohi, FC-D No. 93823, in the Family Court of the First Circuit, State of Hawaii, Findings of Fact and Conclusions of Law, November 18, 1977.
6. Wilfred J. Curley v. Ella Curley, FC-D No. 101804, in the Family Court of the First Circuit, State of Hawaii, Decision, March 21, 1978.
7. Michael Samuel Myers v. Malaleah J. Myers, FC-D No. 110024, in the Family Court of the First Circuit, State of Hawaii, Order Modifying Existing Orders Re Child Support, July 22, 1981
8. Carol A. L. Gupton v. William G. Gupton, FC-D No. 122495, in the Family Court of the First Circuit, State of Hawaii, Order Granting Plaintiff's Motion for Relief From Decree, November 18, 1983

(2) None of my decisions were reversed or criticized by an appellate court.

(3) None of my decisions involved significant federal

or state constitutional issues.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I was appointed by the Supreme Court of the State of Hawaii to the following positions:

Disciplinary Board of the Hawaii Supreme Court:

1974 to 06/93 - Member (there are 18 Board Members, 7 lay members and 11 attorney members)  
 11/74 to 09/76 - Secretary  
 07/88 to 06/90 - Vice-Chairperson  
 07/90 to 11/92 - Chairperson

Board of Bar Examiners of the Hawaii Supreme Court:

Member from 1975 to 1990.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

February to September, 1972, and June to August, 1975. Law Clerk to Chief Justice William S. Richardson of the Hawaii State Supreme Court. I did legal research and drafting and organized and prepared materials for a Citizens' Judicial Conference.

Supreme Court of the State of Hawaii  
 P. O. Box 2560  
 Honolulu, Hawaii 96822

Chief Justice William S. Richardson, retired  
 3335 Loulu Street  
 Honolulu, Hawaii 96822  
 (808)988-6825

2. whether you practiced alone, and if so, the addresses and dates;

February 1974 to April 1977:



46-318 Haiku Road, #24  
Kaneohe, Hawaii 96744

August 31, 1987 through May 31, 1991.

The Law Offices of Helen Gillmor  
Attorney at Law, A Law Corporation  
Suite 2050, Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
(808)536-0002

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

In 1968 after graduation from law school, I went to work at Ropes & Gray, a large law firm in Boston, Massachusetts, working in business and corporate law. My husband, John, was drafted into the Army and I left Boston to join him in Texas in February, 1969.

Ropes & Gray  
One International Place  
Boston, Massachusetts  
Ernest J. Sargeant (617)951-7000

February 1969 to August, 1969. While my husband was stationed in Texas I performed legal work for the El Paso Real Estate Investment Trust, now known as Property Trust of America, in El Paso, Texas. My husband was transferred to the Republic of South Korea so I left and joined him there.

Contact: Berry Edwards  
Suite 610, Coronado Tower Building  
6006 North Mesa Avenue  
El Paso, Texas 79912  
(915)534-4444 / (915)585-2180

October, 1969 to August, 1970. I was a lecturer in constitutional law to Korean judges and prosecutors at the International Legal Center in Seoul, South Korea, under a program funded by the United States Agency for International Development. David M. Phillips was my supervisor.

David M. Phillips  
Professor  
Northeastern University Law School

Boston, Massachusetts  
(617) 437-3919

September, 1970 to December, 1970. My husband and I assisted my husband's father with his law practice.

Law Offices of Alexander R. Gillmor  
15 Elm Street  
Camden, Maine 04843  
[Alexander R. Gillmor is deceased (1975)]

February, 1971 to February, 1972. I was an associate at Moore, Torkildson & Schultze, now known as Torkildson Katz Jossem Fonseca Jaffe Moore & Hetherington, concentrating in business law and civil litigation.

Torkildson Katz Jossem Fonseca Jaffe  
Moore & Hetherington  
1500 Amfac Tower  
700 Bishop Street  
Honolulu, Hawaii 96813

Contact: Robert S. Katz or Jared H. Jossem  
(808) 521-1051

February, 1972 to September, 1972. Law Clerk to Chief Justice William S. Richardson of the Hawaii State Supreme Court. I did legal research and drafting and organized and prepared materials for a Citizens' Judicial Conference.

Supreme Court of the State of Hawaii  
P. O. Box 2560  
Honolulu, Hawaii 96822

Chief Justice William S. Richardson, retired  
3335 Loulu Street  
Honolulu, Hawaii 96822  
(808) 988-6825

September, 1972 to February, 1974 Deputy Public Defender, Office of the Public Defender. I represented indigents charged in criminal proceedings.

Office of the Public Defender  
1130 Nimitz Highway, Suite A135  
Honolulu, Hawaii 96817

Contact: Then Public Defender and now

Retired Circuit Court Judge  
the Honorable Donald K. Tsukiyama  
(808)395-6756

February, 1974 to April, 1977. I gave birth to our first daughter, Rebecca Reed, on September 7, 1974 and our second, Jessica, on November 20, 1976. During this period I maintained a limited private practice out of my home at 46-318 Haiku Road, #24, Kaneohe, Hawaii 96744, and served as a Lecturer in Criminal Law at the University of Hawaii School of Law (Spring Semester 1975) and once again as a Law Clerk to Chief Justice William S. Richardson (Summer of 1975).

University of Hawaii  
The William S. Richardson School of Law  
2515 Dole Street  
Honolulu, Hawaii 96822

May of 1977 to May, 1983 I was appointed by Chief Justice William S. Richardson as a per diem District Court Judge assigned to the Family Court of the First Circuit of the State of Hawaii for six years. Jurisdiction of the Family Court encompasses divorces, child support establishment and enforcement, adoption and paternity, juvenile crime, child abuse and neglect, mental health, civil restraining orders for domestic violence as well as criminal proceedings against adults, including felonies, where the victim is a family member.

Family Court of the First Circuit  
State of Hawaii  
Kaahumanu Hale  
777 Punchbowl Street  
Honolulu, Hawaii 96813

Contact: Honorable Betty M. Vitousek  
(Senior Administrative Judge, retired)  
(808)949-2774

May, 1983 to May, 1985. I was reappointed a per diem Judge by Chief Justice Herman T. F. Lum and I transferred to the District Court of the First Circuit of the State of Hawaii. For the next two years I sat in District Court hearing motions and trials concerning criminal misdemeanors, traffic and civil matters, and conducting preliminary hearings for felony charges.

District Court of the First Circuit  
 State of Hawaii  
 Kauikaeouli Building  
 1111 Alakea Street  
 Honolulu, Hawaii 96813  
 Contact: Honorable James H. Dannenberg  
 Administrative Judge, (808)538-5000

May, 1985 to present. I joined my husband in the private practice of law forming Gillmor & Gillmor, Attorneys at Law, A Law Corporation. My husband, John, left our firm to work at another law firm from September, 1987 to September, 1992. During the period of his practice elsewhere the firm was known as The Law Offices of Helen Gillmor. The address and telephone number have remained the same throughout: 2050 Pacific Tower, 1001 Bishop Street, Honolulu, Hawaii 96813 (808)536-0002.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The character of my practice and legal experience could be divided into three periods:

1. (1968-1977) I practiced commercial and criminal law in the first seven years after law school. I also served as law clerk to the Chief Justice of the Hawaii Supreme Court and taught constitutional law in Seoul, Korea and criminal law at the University of Hawaii School of Law.

2. (1977-1985) During my eight years of service as a per diem District Court judge I served six years in Family Court and two years in District Court. I handled criminal, family law, traffic and civil matters.

3. (1985 to present) In the last nine years I have provided day-to-day legal representation to a number of small businesses. I have also done some civil litigation, real estate transactions and matrimonial litigation involving property division.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From 1968 to 1972, my clients were generally



businesses and institutions.

From 1972 to 1974, as a deputy public defender I represented indigent individuals charged in criminal proceedings.

From 1974 to 1977 my private clients were small businesses or individuals.

From 1985 to the present (after my eight (8) years as a judge) my clients have tended to be small businesses, professionals, business executives and individuals.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I rarely appeared in court prior to becoming a deputy public defender in 1972. I appeared daily as a public defender from 1972 to 1974. I went to court a few times as a sole practitioner from 1974 to 1977. Following my judicial service (1977 to 1985) I have gone to court on a regular basis. Depending on the mix of cases, I vary from frequently to occasionally.

2. What percentage of these appearances was in:

	Since <u>1985:</u>	Prior to <u>1977:</u>
(a) federal courts;	10%	0%
(b) state courts of record;	90%	100%
(c) other courts.		

3. What percentage of your litigation was:

	Since <u>1985:</u>	Prior to <u>1977:</u>
(a) civil;	99%	10%
(b) criminal.	1%	90%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate two hundred fifty (250) cases as sole counsel for my clients, the vast majority of which were done while I was a Deputy Public Defender.

## 5. What percentage of these trials were:

- |               |     |
|---------------|-----|
| (a) jury;     | 3%  |
| (b) non-jury; | 97% |

As a deputy public defender I did try several criminal cases before a jury (1972-74). In my current practice all jury cases (all civil) have settled prior to trial.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

I list ten litigated matters below, but not all may be considered "significant". The cases are presented to give a flavor of the breadth of my practice over the years.

1. State of Hawaii v. Rachel Johnson and State of Hawaii v. Lois Bryan and Vanessa Johnson. In 1973, while a Deputy Public Defender, I represented a number of women charged with prostitution. I filed motions in approximately a dozen cases in the District Court of the First Circuit, State of Hawaii, challenging the Hawaii Penal Code Section on prostitution. The motions were based upon the argument that the statute, as written and applied, violated the equal protection guarantees of the Hawaii and United States Constitutions and abridged the equal rights amendment of the Hawaii constitution. Prior to trial, all of the judges ruled the statute constitutional without written opinion. In all but one instance I prevailed on the merits at trial or the case was dismissed. In the one instance of conviction, which I would have been able to appeal, my client was ruled by the District Court to be financially capable of retaining her own counsel and so, as a deputy public defender, I was unable to proceed with the appeal. The defendant withdrew her appeal.

I include the case to give the flavor of my immersion as a young lawyer in the high volume criminal law practice

of a public defender 20 years ago.

State of Hawaii v. Rachel Johnson and State of Hawaii v. Lois Bryan and Vanessa Johnson, are two of the cases in which the motion challenging the prostitution statute was brought. The motion and the reply memorandum of points and authorities were the same in all twelve cases.

a) The cases were heard in 1973.

b) The cases were heard in the District Court of the First Circuit, Honolulu Division, State of Hawaii.

Judges included Judge Russel Kono (retired), Judge Yoshimi Hayashi (retired), and Ronald B. Greig (retired).

c) Charlotte Littman was the deputy prosecutor, now retired. Department of the Prosecuting Attorney, 1060 Richards Street, Honolulu, Hawaii, 96813 (808)527-6494.

2. I represented the Debtor in Possession in Hokulewa, Ltd., dba Property Management, Ltd., Debtor Bankruptcy No. 84-00561. The Debtor acted as property manager for 19 condominiums whose funds were embezzled by an officer/employee of the company. The case involved simultaneous proceedings in the Circuit Court of the First Circuit, State of Hawaii, between the Debtor and an insurance company, Island Insurance Co. v. Hokulewa, Ltd., dba Property Management, Ltd., et al.; Civil No. 85-3657, an action against the Debtor by 17 condominium associations, AOAO Clubview Gardens III, et al. v. Hokulewa, Ltd., dba Property Management, Ltd., et al.; Civil No. 86-1868, and in the Bankruptcy Court where all the condominium associations and other creditors competed for the assets, particularly the insurance proceeds. One insurance company initially contended that all officers of the corporation were responsible for the criminal conduct of one employee/officer. A motion for summary judgment was brought to resolve the interpretation of various insurance policies concerning liability of the officer/directors, good faith and scope of coverage. There was a question of negligence on the part of the financial institutions which had provided the embezzling officer/employee with monies from the condominium's trust funds. There was also a question of professional liability on the part of those providing accounting services to the corporation.

I was active in negotiating and structuring the ultimate resolution of the conflict. The settlement involved contribution by financial institutions, an accounting firm and three (3) insurance carriers. In representing the property management company in the Chapter 11 proceeding, I was required to consider the interests of both the Debtor and its creditors. My experience in criminal law facilitated the handling of the intertwined questions of bankruptcy, insurance and criminal law.

a) The matter commenced in 1984, I became involved in the case in 1985, I became sole counsel in September, 1986

and it concluded August 31, 1989. The actions in the State Court were stayed and ultimately dismissed.

b) The bankruptcy proceedings took place before Judge Jon J. Chinen, United States Bankruptcy Court for the District of Hawaii.

c) The attorneys were:

William Meheula [now practicing with Jervis Winer  
& Meheula, (808)254-5855]  
and Nadine Ando (808)529-7300  
McCorriston Miho & Miller  
P. O. Box 2800  
Honolulu, Hawaii 96803  
Attorneys retained by the insurance carrier  
for Hokulewa, Ltd.  
in Civil No. 85-3657

James A. Wagner  
Wagner & Watson  
2480 Mauka Tower  
737 Bishop Street  
Honolulu, Hawaii 96813  
(808)533-1872  
Attorney for Creditors Committee  
of Bankruptcy No. 84-00561

Louise Ing  
Alston Hunt Floyd & Ing  
1800 Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
(808)524-1800  
Attorney for:  
AOAO Clubview Gardens III  
AOAO Crescent Park  
AOAO Crown Kinau  
AOAO Ka Hale O'lu  
AOAO Kalakaua Sands  
AOAO Kealoha Arms  
AOAO 1040 Kinau  
AOAO 1134 Kinau  
AOAO Marina Palms  
AOAO Mariner's Village II  
AOAO Newtown Villa I  
Newtown Villa I AOA  
Newtown Villa II AOA  
AOAO Ode Rancho  
AOAO 965 Prospect Street  
AOAO Punahou Tower  
AOAO Regency Tower  
AOAO Sovereign



## AOAO Waikomo Stream Villas

Roy F. Hughes  
 800 Bishop Trust Building  
 1000 Bishop Street  
 Honolulu, Hawaii 96813  
 (808)526-9744  
 Attorney for Elizabeth A. Joy

Gary Chang  
 1490 Mauka Tower  
 737 Bishop Street  
 Honolulu, Hawaii 96813  
 (808)536-3711  
 Attorney for Island Insurance Company, Limited

David Nakashima, Esq.  
 Now practicing with: Alston Hunt Floyd & Ing  
 1800 Pacific Tower  
 1001 Bishop Street  
 Honolulu, Hawaii 96813  
 (808)524-1800  
 Attorney for The Home Insurance Company

Corlis J. Chang  
 Goodsill Anderson Quinn & Stifel  
 1800 Alii Place  
 1099 Alakea Street  
 Honolulu, Hawaii 96813  
 (808)547-5600  
 Attorney for Tokio Marine and Fire Insurance Co., Ltd.

Paul H. Sato  
 Furutani Sato Komatsubara & Marshall  
 600 Central Pacific Plaza  
 220 South King Street  
 Honolulu, Hawaii 96813  
 (808)528-1000  
 Attorney for First Hawaiian Bank

William H. Gilardy, Jr.  
 Now practicing with: Watanabe Ing & Kawashima  
 5th Floor, Hawaii Building  
 745 Fort Street  
 Honolulu, Hawaii 96813  
 (808)544-8300  
 Attorney for The Home Insurance Company

Bruce C. Dinman  
 Formerly with: Dinman Nakamura Elisha & Lahne  
 but now retired.  
 (808)262-0068

## Attorney for AOA The Parkview

Stanley K. W. Chong  
 Financial Plaza of the Pacific  
 12th Floor  
 915 Fort Street  
 Honolulu, Hawaii 96813  
 (808)539-7121  
 Attorney for AOA Punahou Tower

Jeffrey Kato  
 State of Hawaii  
 Department of the Attorney General  
 Room 300, 465 South King Street  
 Honolulu, Hawaii 96813  
 (808)587-2986

3. Leroy Robert Allen v. Hiroko Allen, FC-D No. 108648, Family Court of the First Circuit, State of Hawaii. Pursuant to a stipulation by the parties I was appointed trustee by Judge Evelyn B. Lance on June 16, 1986, to complete the final accounting and distribute the parties' marital assets and debts and to hold marital income until the distribution of said income was determined.

Mr. Allen is a developer who had built a number of high-rise residential apartment condominiums and office buildings during his marriage to Hiroko Allen. The parties were divorced on October 30, 1980 but due to the magnitude and complexity of the marital estate, there had been no division of the property in the six (6) years since the date of divorce.

As trustee I required the parties' attorneys and accountants to produce pertinent records of the nine developments and various other holdings. The process of gathering, producing and reviewing the materials took two (2) years. I met with the attorneys and accountants generally on a biweekly basis and worked through agreement as to the value, income and expenses of the numerous holdings in each development. This involved review of accounting records and tax filings for the numerous second mortgages, agreements of sale and rental leases held by the parties for each development from 1977 forward. In addition, we arranged set-offs and a bidding procedure for the value of the residences of the parties to determine the final division of assets. The magnitude of the accounting negotiations is demonstrated by the fact that just the net income of the various condominium projects between 1977 and 1985 (after expenses and adjustments) was \$5,191,898.96.

My service as a trustee facilitated the settlement of division of property after six (6) years of impasse and provided the parties and the court with enormous savings in time and costs.

a) The Complaint for Divorce was filed October 19, 1978. I was trustee from June 1986 until the final stipulation and order were issued on August 30, 1988.

b) The matter was heard in the Family Court of the First Circuit, Island of Oahu, State of Hawaii, by Judge Evelyn B. Lance.

c) Anthony B. Craven represented the Plaintiff-Husband, Rush Moore Craven Sutton Morry & Beh, 2000 Hawaii Building, 745 Fort Street, Honolulu, Hawaii, 96813 (808)521-0400, and Daniel S. Ukishima represented Defendant-Wife, #1308, 1188 Bishop Street, Honolulu, Hawaii, 96813 (808)532-0505.

4. T.V.W., Ltd., dba Kailua Electric Service, Lienor and contractor to Agricultural Research and Technology Group, Inc., et al., M.L. No. 86-0053 in the Circuit Court of the First Circuit, State of Hawaii; In Re Agricultural Research and Technology Group, Inc. Bankruptcy Case No. 86-00616 in the United States Bankruptcy Court; and T.V.W., Ltd. dba Kailua Electric Service v. Richard Garcia, et al., Civil No. 86-4127 in the Circuit Court of the First Circuit, State of Hawaii as T.V.W., Ltd., dba Kailua Electric Service, Lienor and contractor to Agricultural Research and Technology Group, Inc., et al.; M.L. No. 86-0053 (1986). Three other lien holders and I took depositions of the principals of Agricultural Research and Technology Group, Inc. ("Agretech"). Criminal charges were subsequently brought against a number of the principals and at least one was convicted of fraud.

The case evolved into major litigation. The property to which the mechanics lien attached was owned by individuals who were selling it to the principals of Agretech, not the corporation itself. Various companies connected to Agretech were placed in bankruptcy and Thomas E. Hayes was appointed Trustee of Agretech in United States Bankruptcy Court Bankruptcy Case No. 86-00616, In Re Agricultural Research and Technology Group, Inc. I filed a foreclosure action in State Court: T.V.W., Ltd. dba Kailua Electric Service v. Richard Garcia, et al., Civil No. 86-4127. Eventually the state court proceedings were stayed and we agreed to have our claim handled in the bankruptcy proceeding.

The mechanics lien holders were involved in valuation of the orchid- and plant-growing facility that the various contractors had constructed. The specialized nature of the facility made valuation difficult. The sale of the facility ran into difficulty because it was hard to find an economically viable buyer. Over the years I was involved in auctioning the same piece of property several times due to default of various purchasers. Liability was

found on the part of attorneys advising the principals of Agretech that eventually resulted in my client receiving 100% of its claim.

a) I filed the mechanics lien claim for my client, T.V.W., Ltd., dba Kailua Electric Service on June 5, 1986 and the foreclosure action on November 3, 1986. The bankruptcy proceeding commenced on September 26, 1986. Our part in the proceeding ended with 100% payment of the lien on December 10, 1991.

b) The bankruptcy matter was heard by the United States District Court, District of Hawaii, Federal District Court Judge Martin Pence presided. The State Court mechanics lien matter was heard before Judge Edwin H. Honda and the foreclosure before Judge Phillip T. Chun, both of the First Circuit Court, Island of Oahu, State of Hawaii.

c) The attorneys were:

Simon Klevansky  
Suite 1400  
745 Fort Street  
Honolulu, Hawaii 96813  
(808)524-0155  
Attorney for Thomas E. Hayes, Trustee

Louise Ing  
Suite 1800, Pacific Tower  
1001 Bishop Street  
Honolulu, Hawaii 96813  
(808)524-1800  
General Counsel for Thomas E. Hayes, Trustee

Richard MacMillan  
820 Mililani Street, Suite 711  
Honolulu, Hawaii 96813  
(808)538-0399  
Attorney for Debtor  
Agricultural Research and Technology Group, Inc.

Andrew V. Beaman  
900 Hawaii Building  
745 Fort Street  
Honolulu, Hawaii 96813  
(808)528-8200

Attorney for Defendants  
Rose Lau Ho, James B. S. Lau and Gladys K. Lau

Collette Gomoto  
(now practicing with Public Utilities Commission)  
465 S. King Street, Room 103  
Honolulu, Hawaii 96813



(808)586-2015

Attorney for Defendant Heide & Cooke, Ltd.

Glenn Miyajima

Then Attorney for Defendant Classic Tile Corporation,  
but now inactive

Mark F. Ito

1800 Alii Place

1099 Alakea Street

Honolulu, Hawaii 96813

(808)547-5600

Attorney for Defendant Prime Construction, Inc.

Gary V. Dubin

7 Waterfront Plaza

Suite 400

500 Ala Moana Boulevard

Honolulu, Hawaii 96813

(808)537-2300

Attorney for Defendant Gilbert Matsumoto

Wilson Loo

Suite 1500, Amfac Tower

700 Bishop Street

Honolulu, Hawaii 96813

(808)521-1051

Attorney for Defendant Plant Lab Partners

Thomas H. Fain, formerly with:

Williams, Kastner & Gibbs

2000 Skyline Tower

10900 N.E. 4th Street

Bellevue, Washington 98004

(206)462-4700

Attorney for Defendant Plant Lab Partners

Stephen A. Jones

Ning Lilly & Jones

P. O. Box 3439

Honolulu, Hawaii 96801

(808)528-1100

Attorney for Defendant Wolfgang Daniel

Wesley H. Sakai

1500 Davies Pacific Center

841 Bishop Street

Honolulu, Hawaii 96813

(808)524-0544

Attorney for Defendant Grace Pacific Corporation

Carol Muranaka  
P. O. Box 50089  
Room 7119  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850  
(808)541-3350  
Attorney for Defendant United States of America

David Bunning, formerly with:  
Tax Division  
U. S. Department of Justice  
CTS Western Region  
P. O. Box 683  
Washington, DC 20044  
(202)307-6413  
Attorney for Defendant United States of America

James Agena  
701 Bishop Street  
Honolulu, Hawaii 96813  
(808)523-5030  
Attorney for Unsecured Creditors Committee

5. Beverly E. Kimes v. Charles H. Kimes, FC-D No. 132447, Family Court of the First Circuit, State of Hawaii. I was appointed receiver in the action due to the failure of the defendant to comply with court orders involving support and division of property. The real property of defendant was sequestered to meet the terms of the court orders. Despite efforts by the defendant to hide his assets, I located personal and real property. The amounts owed by defendant were calculated and distributed under the direction of the court over defendant's objections.

(a) I was appointed as Receiver on April 30, 1987. An Order for Distribution of Funds and Discharge of Receiver was filed on June 27, 1988.

(b) The proceedings took place in the Family Court of the First Circuit, Island of Oahu, State of Hawaii. Judge Evelyn B. Lance presided.

(c) Francis H. Yano represented the plaintiff Beverly E. Kimes. His office is at the Melim Building, 333 Queen Street, Suite 601, Honolulu, Hawaii 96813, (808)538-3828. Stuart M. Cowan represented Charles H. Kimes. His address is Suite 728, Ocean View Center, 707 Richards Street, Honolulu, Hawaii 96813, (808)538-1113.

6. Candice Yoshie Fujieki v. Patrick Toshio Fujieki; FC-D No. 87-0947, Family Court of the First Circuit, State of Hawaii.

I represented Patrick Fujieki in a divorce from his wife, Candice Fujieki. The dispute involved complex financial issues due to the large marital estate. Mr. Fujieki

is a principal in an accounting firm, has substantial holdings as an individual and serves as sole trustee for a large estate. There were preliminary motions concerning control of assets, discovery, advancement of costs, and the use of proceeds from the sale of various assets. The issues at trial included valuation and division of a number of parcels of real estate, the assets of several partnerships and various stock holdings.

(a) I entered an appearance as counsel for Mr. Fujieki on March 28, 1988. The Divorce Decree was entered by the court on June 2, 1989.

(b) The matter was heard in the Family Court of the First Circuit, island of Oahu, State of Hawaii by Judge Togo Nakagawa.

(c) The attorney for Mrs. Fujieki was Stephanie A. Rezens, 735 Bishop Street, Suite 205, Honolulu, Hawaii 96813, (808)532-9020.

7. John C. Sheblessy, Administrator of the Estate of Mary Jane Kleve v. Lani Bird, Inc., dba Scenic Air Tours Hawaii; United States District Court, District of Hawaii, Civil No. 91-00294 ACK and In Re Lani Bird, Inc., dba Scenic Air Tours; 129 Br. 203 (D. Haw. 1991) United States Bankruptcy Court, Bankruptcy Case No. 89-00602 (Chapter 11). I represented the Estate of Mary Jane Kleve in a wrongful death action; the decedent was one of ten passengers on a fatal scenic flight in 1989. The initial issue was the handling of a \$1,000,000.00 insurance policy with multiple claimants, each one of whom could have exhausted the policy limits. As a result, the case became a bankruptcy court matter. In that court the major issue became the preservation of the remaining assets in the face of the airline owner's several attempts to defeat the interest of the tort claimants, including the use of improper appraisal and accounting data as well as an attempt to sell the remaining assets of the airline at a bargain price, while receiving a substantial consideration personally for non-competition with the buyer. I was active in obtaining the ruling which rejected the proposed sale as a transparent attempt by the debtor to receive a preference over the creditors. The resulting appointment of a trustee produced a sale of the airline which resulted in more than \$500,000 more in additional funds to be divided among the passengers.

The District Court case was dismissed and the claimants collected the insurance proceeds and funds generated by the sale of the airline through the bankruptcy.

a) The matter commenced September 8, 1989 and was resolved with the final pay out to the claimants on August 31, 1992.

b) The United States Bankruptcy Court, District of Hawaii, Judge Jon J. Chinen.

c) The attorneys were:

Jerrold K. Guben  
Reinwald O'Connor Marrack Hoskins & Playdon  
24th Floor, PRI Tower, Grosvenor Center  
737 Bishop Street  
Honolulu, Hawaii 96813  
(808)524-8350  
Attorney for Debtor, Lani Bird, Inc. dba Scenic Air  
Tours

T. Irving Chang and Myra M. Kaichi  
1250 Central Pacific Plaza  
220 S. King Street  
Honolulu, Hawaii 96813-4542  
(808)528-5800  
Attorneys for Trustee, Paul S. Sakuda

David C. Farmer  
Case & Lynch  
2500 & 2600 Mauka Tower, Grosvenor Center  
737 Bishop Street  
Honolulu, Hawaii 96813  
(808)547-5512  
Attorney for Adrien Beland, individually and as  
Administrator of the Estate of Nicole Beland and  
Helen Beland, and Georges-Henri Martel, individually  
and as Administrator of the Estate of Sylvia Martel  
and Louisa Martel

L. Richard Fried, Jr. and Allen K. Williams  
Cronin Fried Sekiya Kekina & Fairbanks  
1900 Davies Pacific Center  
841 Bishop Street  
Honolulu, Hawaii 96813  
(808)524-1433  
Attorneys for the Estate of Mary K. Statler,  
deceased, Michael J. Statler and Jennifer Wenskunas

Peter England Roberts [currently at (808)528-2917]  
and Richard Turbin (808)528-4000  
Law Offices of Richard Turbin  
1850 Mauka Tower, Grosvenor Center  
737 Bishop Street  
Honolulu, Hawaii 96813  
Attorneys for the Estate of Anne Herbert

Ward D. Jones  
Chuck Jones and MacLaren



2210 City Financial Tower  
201 Merchant Street  
Honolulu, Hawaii 96813  
(808)533-3614

Attorney for the Estate of Delphine Clemenz and  
Creditors Delmiro and Ida Clemenz

Mark Davis  
Davis & Levin  
10 Marin Street  
Honolulu, Hawaii 96813  
(808)524-7500

Attorney for the Estate of Robert Wrenn

James J. Bickerton  
Bickerton & Ramos-Saunders  
5 Waterfront Plaza  
500 Ala Moana Boulevard, Suite 550  
Honolulu, Hawaii 96813  
(808)599-3811

Attorney for Robert Hernandez

Richard L. Rost and James W. Geiger  
One Main Plaza  
2200 Main Street, Suite 610  
Wailuku, Hawaii 96793  
(808)244-9044

Attorneys for Felicity Anne Herbert and Shane  
Herbert

Bunny Bullock  
Bullock Law Firm  
211 East Fourth Street  
P. O. Box 1064  
Russellville, AR 72801  
(501)968-1426

Attorney for the Estates of Shirley Merle and Jack  
E. Merle, Sr.

Harold G. Hoppe  
Sterns & Ingram  
2300 PRI Tower, Grosvenor Center  
733 Bishop Street  
Honolulu, Hawaii 96813  
(808) 528-1900

Attorney for Catherine Imelda Spillane, individually  
and as Administrator of the Estate of Peter Anthony  
Spillane

8. Randall P. Abbott and Randy Abbott Realty, Inc.,  
v. Roger A. Hegarty; Civil No. 90-00387 ACK and Roger A.  
Hegarty v. Randall P. Abbott and Frank J. Supon; Civil No.

90-00525 DAE (United States District Court, District of Hawaii); Pacific Ocean Properties, Inc. v. Roger Hegarty; S.P. No. 900025 (Circuit Court of the Fifth Circuit, State of Hawaii).

The Abbott/Supon/Hegarty litigation involved defending an upstream merger for the purpose of removing Roger A. Hegarty ("Hegarty"), a dissident shareholder who refused to perform his obligations under a personal service contract with Pacific Ocean Properties, Inc. Pursuant to a Shareholder's Agreement, Hegarty and Frank J. Supon ("Supon") agreed inter alia that the newly formed Pacific Ocean Properties, Inc. ("P.O.P.") would acquire from Randall P. Abbott ("Abbott") the stock and certain assets of Abbott Realty, Inc. ("Abbott Realty"). P.O.P. agreed to pay Abbott and Abbott Realty \$300,000 for the stock and assets of Abbott Realty. As additional consideration, Hegarty promised to devote substantial time and effort in a management capacity to advance the interests of P.O.P. The cases involved complex issues of corporate law, including appraisal rights of dissenting shareholders and damages for breaches of service contracts among the shareholders. I represented Randy Abbott, the President and Chief Broker of Randy Abbott Realty, Inc. The matter eventually settled with the parties agreeing to removal of the shareholder.

a) I filed a complaint on behalf of Abbott and Abbott Realty against Hegarty for collection of amounts owed under the various agreements between the parties in the United States District Court for the District of Hawaii, entitled Abbott et al. v. Hegarty (Civil No. 90-00387 ACK) on May 10, 1990. On July 6, 1990 Hegarty sued Abbott and Supon, Hegarty v. Abbott, et al. (Civil No. 90-00525 DAE) for breach of the Shareholder's Agreement and the Buy/Sell Agreement, misappropriation of corporate opportunities and other allegations. The suits were consolidated April 19, 1991. On May 10, 1990 P.O.P. filed a declaratory action in the Circuit Court of the Fifth Circuit, State of Hawaii (S.P. No. 90025) to determine the value of the minority shareholder Hegarty's interest in the corporation. A settlement was reached and a stipulation and order dismissed all claims with prejudice was entered on January 2, 1992.

b) In the United States District Court, District of Hawaii, Judge David A. Ezra, presiding. The declaratory action was presided over by Judge George M. Masuoka in the Circuit Court of the Fifth Circuit, Island of Hawaii, State of Hawaii.

c) The attorneys were:

Sam K. Yee (now practicing with Finance Factors, Ltd.)  
P. O. Box 3979  
Honolulu, Hawaii 96812

(808)548-3311

Attorney for Roger A. Hegarty

Brad S. Petrus  
McCorriston Miho & Miller  
Five Waterfront Plaza  
Fourth Floor  
500 Ala Moana Boulevard  
Honolulu, Hawaii 96813  
(808)529-7300  
Attorney for Frank J. Supon

David A. Feller [currently at (808)732-0522]  
and J. Gregory Turnbull  
Case & Lynch  
2600 Mauka Tower, Grosvenor Center  
737 Bishop Street  
Honolulu, Hawaii 96813  
(808)547-5400  
Attorneys for Pacific Ocean Properties

9. Dennis Riley v. Western Pacific Company, Ltd.,  
Civil No. H91-2209 in the District Court of the First  
Circuit, Honolulu Division, State of Hawaii.

I represented Western Pacific Company, Ltd., a carpet,  
floor covering, and decorating fabric wholesaler and mate-  
rial provider. I handled the acquisition of the  
corporation and, subsequently, its day-to-day legal af-  
fairs. A typical matter was the suit brought by an employ-  
ee fired for nonperformance in September, 1990. He brought  
suit on May 6, 1991 to collect on three counts: Count I  
\$1,500 for a car allowance, Count II \$8,500 for unpaid  
commissions for sales made and Count III damages to be  
determined at trial for alleged fraudulent misrepresenta-  
tions. I produced records at trial to demonstrate the  
method of establishing commissions for sales employees and  
evidence of the plaintiff's failure to perform his duties.  
There was conflicting evidence regarding the car allowance  
question. The court found my client owed \$1,500 in car  
allowance but found no commissions owed to plaintiff and no  
evidence of fraud on the part of my client.

a) The complaint was filed May 6, 1991. Trial com-  
menced on May 26, 1992 and was continued and concluded on  
June 3, 1992.

b) The case was heard before Judge Francis I. Yamashi-  
ta in the District Court of the First Circuit, Honolulu  
Division, State of Hawaii. Judge Yamashita now serves as a  
federal magistrate in the Federal District Court, District  
of Hawaii.

c) Attorneys for Dennis Riley were:  
Wesley W. Ichida  
Stephen M. Teves

Case & Lynch  
 Suites 2500 & 2600  
 737 Bishop Street  
 Honolulu, Hawaii 96813  
 (808) 547-5400

10. Gretta D. Yau Wagner v. Clyde David Wagner; FC-D No. 92-0012 in the Family Court of the Second Circuit, Island of Maui, State of Hawaii.

I represented Gretta D. Yau Wagner in a divorce from her husband, C. David Wagner. During the marriage the Wagners and Mr. Wagner's father developed Wailea Point, a luxury waterfront townhouse condominium project on the island of Maui. Mr. Wagner was participating in other real estate developments on Maui, in Washington State, and Canada at the time of the divorce. The parties' assets also included stock and other real property. Mr. Wagner owned and operated a real estate brokerage firm.

The dispute between the parties involved the valuation of the property held in the three jurisdictions and the benefit to Mr. Wagner from his involvement in the various developments. At trial there was emphasis on establishing Mr. Wagner's earnings as a developer and real estate broker.

(a) A Complaint for Divorce was filed on January 10, 1992. A Decree Granting Divorce and Awarding Child Custody was entered on June 14, 1993.

(b) The proceedings took place in the Family Court of the Second Circuit, Island of Maui, State of Hawaii. Judge Douglas S. McNish presided.

(c) Mr. Wagner was represented by Paul R. Mancini, Case & Lynch, 33 Lono Avenue, Suite 470, Kahului, Maui, Hawaii, 96732-1681, tel. (808) 871-8351.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

After 26 years as an attorney there are three aspects of my professional life that are particularly important to me: (1) my practice in a broad spectrum of substantive law areas, (2) my immersion in the disciplinary system, and (3) the opportunities I have had to improve the legal system.

(1) I am proud of the breadth of my legal experience. Circumstances required that I live in four jurisdictions: Massachusetts, Texas, South Korea and Maine, prior to settling in Honolulu, Hawaii 23 years ago. The opportuni-



ties presented to me by my husband's unexpected military service provided a sampling of various types of law practice, as well as the opportunity to teach American constitutional law to experienced judges and prosecutors in South Korea.

When I began my practice in Boston and then Honolulu, women were not encouraged by law firms to participate in trial work. My desire to gain first-hand experience in the court room led me to serve as a law clerk to Chief Justice Richardson and then as a deputy public defender. That appellate and trial experience provided me with a solid background when I was appointed a per diem judge, first in Family Court (in 1977 for six years) and later in State District Court (in 1983 for two years).

In 1985 I joined my husband in private practice where I have provided legal services to small businesses and individuals. My practice deals with business, real estate and matrimonial actions involving property division.

(2) In 1974 the Supreme Court of Hawaii organized a new grievance system to handle attorney discipline investigation and prosecutions and to provide ethics advice and education. I was one of the initial appointees to the 18-member Disciplinary Board by the Supreme Court. I served on the Board until June 30, 1993, when I retired after 19 years of service.

I took an active part in the development of the grievance system, and devoted at least 3,000 hours over the years to a variety of activities.

The Board is composed of 18 members. Non-lawyers comprise at least one-third of the Board. The Board sets policy guidelines for the handling of disciplinary matters, reviews cases in which formal disciplinary proceedings have been filed, and issues formal ethics opinions.

I served on all of the committees of the Board at one time or another, (Rules, Hearings, and Opinion Letters) and as Secretary from 1974-76, Vice-chairperson from 1988-90, and Chairperson from 1990 through November, 1992.

When the Hawaii State Bar Association became a mandatory bar I ran for office as a director of the new mandatory bar in order to sit on both the Bar Board and the Disciplinary Board to assist in coordinating the changes necessary to both entities due to the mandatory nature of the bar. I worked particularly hard to ensure broad representation on the Disciplinary Board of the various ethnic groups that make up the population of Hawaii. I also worked for greater diversity in the composition of lawyer members on the Disciplinary Board in terms of legal specialization and law firm size.

I have included the 1992 Annual Report of the Hawaii Attorney Grievance System to provide an in-depth description of the workings of the grievance system.

(3) Since admission to the bar, I have devoted numerous hours to the Bar Association and other professional committees and conferences. Committees have included the Bar Examiners, the Task Force for Secure Custody for Juveniles, the Committee to Plan a Family Court Center for Oahu, the Hawaii Women's Legal Foundation, and several Alternate Dispute Resolution Committees. Conferences have involved the Citizens Conference on the Administration of Justice and the Hawaii Judicial Foresight Conference. I have received great satisfaction from working toward improving our legal system.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Gillmor & Gillmor, Attorneys at Law, A Law Corporation will make a SEP-IRA contribution for calendar year 1994 based upon the amount of my salary during 1994 at the firm's rate of contribution for all covered employees.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I shall conform to and be guided by all requirements and ethical standards set out for Federal District Court Judges by the Committee on Codes of Conduct of the Judicial Conference of the United States, together with any other applicable rule or law.

Any cases involving my husband John P. Gillmor, also an attorney, and those involving former clients, would create a conflict. I and my family have stock holdings that raise a potential conflict that must be provided for under the applicable rules and laws. I will handle all of these conflicts in accordance with the standards and requirements of the Committee on Codes of Conduct of the Judicial Conference of the United States.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have no plans to pursue outside employment should I be appointed to the federal bench.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so,

copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

In response to this question I attach my financial disclosure report as required by the Ethics Reform Act of 1989 which I completed on August 26, 1994.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I was Co-chair of the platform committee for the 1986 Democratic State Convention, State of Hawaii. I was a campaign worker for Cec Heftel, a 1986 candidate for governor of the State of Hawaii. I distributed literature, hosted coffee hours and spoke on behalf of the candidate. In 1986 I also hosted a coffee hour for Mufi Hanneman, candidate for the U. S. House of Representatives.



AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. G, §§101-112)

1. Person Reporting (Last name, first, middle initial)  GILLMOR, HELEN W.	2. Court or Organization  United States District Court for the District of Hawaii	3. Date of Report  Aug 26, 1994
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  District Court Judge (active)	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date _____ ____ Initial ____ Annual ____ Final	6. Reporting Period Jan. 1, 1993 to Jul 31, 1994
7. Chambers or Office Address Gillmor & Gillmor 2050 Pacific Tower 1001 Bishop St Honolulu, Hawaii 96813	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Officer/Director Gillmor & Gillmor, AAL, ALC

Officer/Director (resigned) Penobscot Trading Co., Ltd.

Fiduciary Lee Minors (see attached for other positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒

NONE (No reportable agreements)

Note: current employment: Gillmor &amp; Gillmor, AAL, ALC

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honorary only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)☐

NONE (No reportable non-investment income)

		1993
1	Gillmor & Gillmor, AAL, ALC	\$ 90,000.00
2	Gillmor & Gillmor, AAL, ALC (S)	\$ 25,000.00 (S)
3	Carlsmith, Ball, Wichman, Murray, Case, Mukai & Ichiki (S)	\$ 41,326.00 (S)
4		\$
5	Spouse is an attorney.	\$

ADDENDUM TO PART I. POSITIONS  
FINANCIAL DISCLOSURE REPORT OF HELEN GILLMOR

<u>POSITION</u>	<u>NAME OF ORGANIZATION/ENTITY</u>
Commissioner in Foreclosure	<u>Beneficial v. Teruya</u>
Commissioner in Foreclosure	<u>Dieter v. Lagondino</u>

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

GILLMOR, HELEN W.

Date of Report

Aug 26, 1994

**IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION
☐ NONE (No such reportable reimbursements or gifts)

1	EXEMPT	
2		
3		
4		
5		
6		
7		
8		

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE
☐ NONE (No such reportable gifts)

1	EXEMPT	\$
2		\$
3		\$
4		\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*
☒ X NONE (No reportable liabilities)

1		
2		
3		
4		
5		
6		
7		

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 N = \$100,001 to \$250,000  
 R = \$250,001 to \$500,000 D = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

GILLMOR, HELEN W.

Date of Report

Aug 26, 1994

## VII. INVESTMENTS AND TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets) <small>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from price disclosure.</small>	B. Income during reporting period 1993	C. Gross value at end of reporting period	D. Transactions during reporting period					
			If not exempt from disclosure					
(1) Amt. Code (A-B)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, margin, redemption)	(2) Date Month Day	(3) Value Code (J-P)	(4) Gain Code (A-B)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/>	NONE (No reportable income, assets, or transactions)							
1								
2	SEE ATTACHED ADDENDUM							
3								
4								
5								
6								
7								
8								
9								
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								

1 Income/Gain Codes: (See Col. B1 & B4)	A=\$1,000 or less E=\$15,001 to \$40,000 J=\$15,000 or less (See Col. C1 & D1)	B=\$1,001 to \$2,500 F=\$10,001 to \$20,000 K=\$15,001 to \$50,000 Q=\$100,001 to \$1,000,000	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000 R=more than \$1,000,000	D=\$5,001 to \$15,000 B=more than \$1,000,000 H=\$100,001 to \$250,000
2 Value Codes: (See Col. C1 & D1)	R=\$250,001 to \$500,000 C=Appraisal U=Book Value	R=cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market



**ADDENDUM TO PART VII. INVESTMENTS AND TRUSTS  
FINANCIAL DISCLOSURE REPORT OF HELEN GILLMOR**

INCOME DURING  
REPORTING  
PERIOD

GROSS VALUE  
AT END OF  
REP. PERIOD

A. Descrip. of Assets	B. (1) AMT. CODE	B. (2) TYPE	C. (1) VALUE CODE	C. (2) VALUE METH.	D. TRANS.
100 s/ Alum. Co. of Am.	A	DIV	J	T	Exempt
200 s/ Broken Hill Prop.	A	DIV	J	T	Exempt
100 s/ Cemex S A Sponsored ADRF	A	DIV	J	T	Exempt
1084 s/ First Hawaiian Inc.	B	DIV	K	T	Exempt
385 s/ Janus Mercury Fd.	A	DIV	J	T	Exempt
1088 s/ Invesco European Fd.	A	DIV	J	T	Exempt
746 s/ Gabelli Asset Fd.	A	DIV	J	T	Exempt
541 s/ Morgan Stanley Emerging Mkt. Fd.	A	DIV	J	T	Exempt
200 s/ Supercuts Inc.	A	DIV	J	T	Exempt
202 s/ GAP Inc.	A	DIV	J	T	Exempt
1504 s/ Bancorp Hawaii	E	DIV	L	T	Exempt
219 s/ Hawaiian Electric	A	DIV	J	T	Exempt
201 s/ WAL-MART	A	DIV	J	T	Exempt
446 units Warburg Pincus Intl. Eqty. Fd.	A	DIV	J	T	Exempt
400 s/ Mexico Equity & Income Fd. (S)	A	DIV	J	T	Exempt
190 s/ The New USA Mutual Fd. (S)	A	DIV	J	T	Exempt
1445 s/ GT Europe Growth Fd. (S)	A	DIV	K	T	Exempt

A. Descrip. of Assets	B. (1) AMT. CODE	B. (2) TYPE	C. (1) VALUE CODE	C. (2) VALUE METH.	D. TRANS.
806 s/ Kemper High Yield Fd. (S)	A	INT	J	T	Exempt
947 s/ Putnam High Yield Trust (S)	E	INT	J	T	Exempt
600 s/ Cent Me Pwr (S)	A	DIV	J	T	Exempt
400 s/ Cent Energy (S)	A	DIV	J	T	Exempt
600 s/ Jackpot Enterprises Inc. (S)	A	DIV	J	T	Exempt
600 s/ Jostens (S)	A	DIV	J	T	Exempt
600 s/ MTC Electronic Tech Newf. (S)	A	DIV	J	T	Exempt
200 s/ Telebras (S)	A	DIV	J	T	Exempt
1400 s/ Unvl. Health Rlty. Inc. Tr. Shrs. Ben. Int. (S)	B	DIV	K	T	Exempt
302 Fidelity Global Bond Fd. (S)	A	INT	J	T	Sold 1994
3271 units United Svc Gold Shares (S)					
500 s/ Cent Me Pwr (DC)	A	DIV	J	T	Exempt
400 s/ Mexico Fund Inc. (DC)					
600 s/ Unvl. Health Rlty. Inc. Tr. Shrs. Ben. Int. (DC)	A	DIV	J	T	Exempt
247 units Janus Worldwide Fd. (DC)	A	DIV	J	T	Exempt
459 units Vanguard Fixed Income High Yield Corp. P. (DC)	A	DIV	J	T	Exempt
500 s/ Cent Me Pwr (DC)	A	DIV	J	T	Exempt
600 s/ Unvl. Health Rlty. Inc. Tr. (DC)	A	DIV	J	T	Exempt
1154 units Vanguard Fixed Income High Yield Corp. P. (DC)	A	DIV	J	T	Exempt

A. Descrip. of Assets	B.(1) AMT. CODE	B.(2) TYPE	C.(1) VALUE CODE	C.(2) VALUE METH.	D. TRANS.
Schwab Money Mkt. Honolulu, HI	A	INT	K	U	Exempt
Schwab Money Mkt. Honolulu, HI (S)	A	INT	K	U	Exempt
Merrill Lynch Money Mkt. (S) Honolulu, HI	A	INT	J	U	Exempt
Schwab Money Mkt. (DC) Honolulu, HI	A	INT	J	U	Exempt
Schwab Money Mkt. (DC) Honolulu, HI	A	INT	J	U	Exempt
Haw. Empl. FCU (J) Honolulu, HI	A	INT	J	U	Exempt
Hawaii National Bank (DC) Honolulu, HI	A	INT	J	U	Exempt
Hawaii National Bank (DC)	A	INT	J	U	Exempt
A. S. Haley Loan (J)	A	INT	J	U	Paid 4/94
A. S. Haley Loan (DC)	A	INT	J	U	Paid 4/94
A. S. Haley Loan (DC)	A	INT	J	U	Paid 4/94
10,000 s/ Gillmor & Gillmor, Honolulu, HI (J)	A	DIV	L	E	Exempt
3500 s/ Penobscot Trading, Honolulu, HI	A	DIV	J	U	Exempt
1500 s/ Penobscot Trading (DC)	A	DIV	J	U	Exempt
NW Mutual Annuity	A	DIV	K	U	Exempt
15,000 P. R. Bond 12/1/06 (J)	A	INT	J	U	Sold 1993
New York Life Ins	B	DIV	K	U	Exempt
MONY Life Ins	A	DIV	J	U	Exempt
Washington Nat Life Ins (S)	A	DIV	J	U	Exempt





## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

GILLMOR, HELEN W.

Date of Report

Aug 26, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Helen W. Gillmor*

Date

Aug 26, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS.

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

HELEN GILLMOR

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks		11,500	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
United securities—add schedule			Notes payable to relatives		
[1] United securities—add schedule		81,000	Notes payable to others		
Accounts and notes receivable			Accounts and bills due		8,700
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Debtors			Real estate mortgages payable—add schedule		200,000
[2] Real estate owned—add schedule		1,250,000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property		60,000			
Cash value—life insurance		15,000			
Other assets—itemize: Annuity		25,000			
[3] IRA accounts—self		120,000			
[4] IRA accounts—husband		40,000			
[5] Rebecca's holdings		40,000			
[6] Jessica's holdings		40,000			
			Total liabilities		208,700
			Net worth		1,692,300
			Total liabilities and net worth		1,901,000
Total assets		1,901,000			
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	none		Are any assets pledged? (Add schedule)	none	
On leases or contracts	none		Are you defendant in any suits or legal actions?	no	
Legal claims	none		Have you ever taken bankruptcy?	no	
Provision for Federal income tax	none				
Other special debt	none				

\*\* liable on lease for Gillmor & Gillmor, remaining term 10 months at \$2,424.20 month.

- [1] Unlisted securities: see attached Schedule A  
 [2] See attached Schedule B  
 [3] See attached Schedule C  
 [4] See attached Schedule D  
 [5] See attached Schedule E  
 [6] See attached Schedule F  
 [7] See attached Schedule G

FINANCIAL STATEMENT  
OF HELEN GILLMOR  
SCHEDULE A

1000 shares, Gillmor & Gillmor, Attorneys at Law, A Law Corporation, a Hawaii corporation - law practice estimated value	\$70,000.00
5000 shares, Penobscot Trading Company, Ltd., a Hawaii corporation, sale of antiques and oriental carpets estimated value	\$5,000.00
3 limited partnership units of Molokai Investment Associates, a Hawaii limited partnership, real estate investment, Island of Molokai, State of Hawaii, estimated value	\$6,000.00*
	<hr/>
TOTAL	\$81,000.00

\* Molokai Investment Associates is acquiring a 47.348 acre parcel of land under an installment sales contract. \$5,975.50 was paid by Helen Gillmor and her husband on March 14, 1994 for 3 limited partnership units. Additional monthly payments of \$112.05 are required until September 1, 1999.

FINANCIAL STATEMENT  
OF HELEN GILLMOR  
SCHEDULE B

Real Estate Owned

Single family residence where our family resides:

4970 Kolohala Street  
Honolulu, Hawaii 96816

per December 1993 appraisals for mortgage refinancing.



## FINANCIAL STATEMENT

OF HELEN GILLMOR

## SCHEDULE C

My individual IRA accounts contain the following securities:

Schwab IRA - SEP:

100	shares	Aluminum Co. of America
262.48	shares	Bancorp Hawaii Inc.
200	shares	Broken Hill Prop ADR F Sponsored ADR
337	shares	Cemex S A Sponsored ADRF
1,000	shares	China JINRONG CORP F
60	shares	Cyanotech Corp.
1,084.82	shares	First Hawaiian Inc.
200	shares	MTC Electronic Tech F
541.26	shares	Morgan Stanley Emerging Mkt. Fd.
200	shares	Supercuts Inc.
202.77	shares	GAP Inc.
1,088.28	units	Invesco European Fund
746.17	units	Gabelli's Asset Fund
385.802	units	Janus Mercury Fund
1,050.81	units	Schwab Money Market Fund

Schwab - Contributory IRA:

66	shares	A D A C Laboratories
1,242.43	shares	Bancorp Hawaii Inc.
219.43	shares	Hawaiian Electric Industries
201.62	shares	WAL-MART Stores Inc.
446.53	units	Warburg Pincus Intl. Eqty.
46.46	units	Schwab Money Market Fund

## FINANCIAL STATEMENT

OF HELEN GILLMOR

## SCHEDULE D

My husband, John P. Gillmor, holds the following securities:

John P. Gillmor - IRA Rollover:

400	shares	Mexico Equity & Income Fnd.
5	shares	LVI Group Inc. Com. New
92	shares	Resorts Intl. Inc. PV 1CT
190	shares	The New USA Mutual Fd.
1,445.76	shares	GT Europe Growth Fund
806	shares	Kemper High Yield Fd.
947	shares	Putnam High Yield Trust
4,000	shares	Resorts Intl. Inc. Sub. Deb.
400	units	Unvsl Health Rlty IT SBI
3,050.01	shares	Merrill Lynch Retirement Reserves

John P. Gillmor - IRA Contributory:

400	shares	Centerior Energy Corp.
1,000	shares	China JINRONG CORP F
600	shares	Jackpot Enterprises Inc.
15	shares	L V I Group Inc.
600	shares	MTC Electronic Tech Newf. F
69	shares	Resorts Intl. Inc.
110	shares	Southmark Corp. New
6	shares	Southmark PFD Ser. A Conv.
1,000	shares	Unvl. Health Rlty. Inc. Tr. Shrs. Ben. Int.
3,271.90	units	United Series Gold Shares
781.60	units	Vanguard Fixed Income High Yield Corp. P.
3,000	shares	Resorts Intl. 11.375% due 4/1/13 Escrow Pndg. Poss. Iss. of Shs/Litigatn.
600	shares	Central Maine Power Co.
400	shares	Jostens Incorporated
29,329.01	shares	Schwab Money Market Fund

John P. Gillmor - SEP-IRA:

200	shares	Jostens Incorporated
135.74	shares	Schwab Money Market Fund

## FINANCIAL STATEMENT

OF HELEN GILLMOR

## SCHEDULE E

My daughter, Rebecca Reed (20), holds the following:

Rebecca Reed Gillmor Irrevocable Trust:

500	shares	Central Maine Power Co.
600	shares	Unvl. Health Rlty. Inc. Tr.
1,154.14	units	Vanguard Fixed Income High Yield Corp. P.
9,628.76	units	Schwab Tax-Exempt Fund

Rebecca R. Gillmor UGMA:

5	shares	Walt Disney Company
---	--------	---------------------

Hawaii National Bank UGMA Checking Account

\$4,186.67

FINANCIAL STATEMENT  
OF HELEN GILLMOR  
SCHEDULE F

My daughter, Jessica (17), holds the following:

Jessica Hope Gillmor Irrevocable Trust:

500	shares	Central Maine Power Co.
400	shares	Mexico Fund Inc.
600	shares	Unvl. Health Rlty. Inc. Tr. Shrs. Ben. Int.
247.89	units	Janus Worldwide Fund
459.14	units	Vanguard Fixed Income High Yield Corp. P.
5,977.19	units	Schwab Tax-Exempt Fund

Jessica H. Gillmor UGMA:

5 shares Walt Disney Company

Hawaii National Bank UGMA Checking Account:

\$4,643.69



FINANCIAL STATEMENT

OF HELEN GILLMOR

SCHEDULE G

Mortgage Information:

Mortgage with Corstan, Inc. in the amount of \$200,000 on our family residence at 4970 Kolohala Street (see Schedule B).

The mortgage is dated January 27, 1994.

The term is 15 years and the monthly payments of principal and interest are \$1,728.51.

Loan No. 0000083477  
Corstan, Inc.  
P. O. Box 98644  
Las Vegas, NV 89193-8644

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My largest time commitment to public service has been my service for nineteen years on the Disciplinary Board of the Hawaii Supreme Court processing ethical complaints against lawyers. I estimate I have spent in excess of three thousand (3,000) hours on Disciplinary Board matters over a period of nineteen (19) years.

Over the past five (5) years I have given legal advice and prepared legal documents for formation of several nonprofit corporations, including the Samaritan Counseling Center, an interfaith counseling service, and the Friends of the Judiciary Museum of Hawaii. This may amount to a total of one hundred (100) hours.

In private practice I have provided legal services to persons unable to pay. I have assisted in avoiding mortgage foreclosures, dealt with collections and bankruptcy matters for those with limited funds. I have adjusted my bill where ability to pay became an issue. I estimate I have contributed at least thirty (30) hours per year in such services.

As a member of Waiokeola Congregational Church, I have been asked by my minister and others in the church to provide advice and counsel on a variety of matters involving criminal, family, creditors rights and constitutional law matters. I estimate that I have contributed fifteen (15) hours per year in such services.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I do not belong and I do not believe I have ever

belonged to an organization that invidiously discriminates on the basis of race, sex or religion.

My husband became a member of the Pacific Club in Honolulu, Hawaii in the fall of 1986. Although the club's membership policies, now as then, are non-discriminatory, an issue arose in 1988-89 regarding a "men only" policy during a certain time of day at the bar in the card room. This "men only" policy at the card room bar, of which I had been unaware, was quickly rescinded.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no federal judicial selection commission currently active for the Federal District of Hawaii. I submitted my name and resume to Senator Daniel K. Inouye's office and asked to be considered for the Federal District Court judgeship for the District of Hawaii. Early in 1993 in Honolulu (February 19, 1993), I met with Senator Inouye's Chief of Staff in his Hawaii office. I later met (on March 26, 1993) with Senator Inouye and his staff in Senator Inouye's Honolulu office.

On January 7 and 11, 1994 I met in Honolulu with a representative from the Office of Policy Development of the United States Justice Department.

On April 19, 1994 I met with officials of the Office of Policy Development at the Department of Justice in Washington, D.C.

On June 30, 1994 I met with a representative from the Federal Bureau of Investigation in my Honolulu office.

On August 9, 1994 I met with a member of the American Bar Association Standing Committee on Federal Judiciary.

I received a telephone call from a member of the White House Counsel's office on August 25, 1994 informing me that the President had nominated me to be a United States District Court Judge.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The focus of the courts is on adjudication of disputes and not on the task of problem solving in the broader sense. Because the federal system is limited by the "case or controversy" clause, it is, by definition, limited to the resolution of the concrete disputes of actual litigants. The basic rationale for the federal "case or controversy" standard is that the adversarial process works best when self-interest on both sides of the case drives the presentation of evidence and argument.

Judges must be intellectually honest in their search for truth. Their search to discover the law must be based upon sound scholarship. A judge should not have a personal agenda to advance. A court must be guided by stare decisis. In instances where prior authority does not provide a clear answer, a judge should follow the law available and look to analogous cases as a guide. In such situations restraint is in the best tradition of the law.



## Responses of Helen Gillmor to Supplemental Questions from Senator Pressler

Exclusionary Rule

1. It is the duty of a U.S. District Court Judge to follow the legal precedents as established by the U.S. Supreme Court. If confirmed by the Senate as a district court judge, I would apply the exclusionary rule in accordance with the rulings of the Supreme Court, including its decision in United States v. Leon.

2. As a district court judge, I would be obligated to apply any statutes enacted by Congress and signed into law, as those statutes are interpreted by the Ninth Circuit Court of Appeals and the United States Supreme Court.

Death Penalty

1. The United States Supreme Court has determined that the death penalty is not cruel and unusual punishment proscribed by the Eighth Amendment. I am bound to follow these precedents, and I believe these decisions are dispositive of this issue.

2. No.

Habeas Corpus

1. Congress has the power to enact a statute providing for habeas corpus reform, subject to constitutional limitations, and as a district court judge, I would be bound to follow such legislation.

2. Exhaustion of state remedies in habeas corpus proceedings, consistent with constitutional requirements, provides one method of conserving federal judicial resources.

3. Congress may enact statutory time limits upon the commencement of habeas corpus petitions, subject to constitutional requirements, including those of due process.

### Role of Federal Judge

1. In approaching the determination of an issue of first impression, as a federal district judge, I would look first to the language of the statute in question. I would then turn to legislative history for guidance, if the language of the statute is not sufficiently clear. I would also want to examine analagous case law in the Ninth Circuit and other federal jurisdictions. In a particular case, it might be instructive to consider state court precedent having similar fact patterns. A thorough examination of all sources is appropriate in determining a matter of first impression.

2. Yes, I do not believe that any personal feelings which I might have should enter into judicial decision-making.

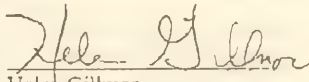
3. The proper role of a federal district court judge is to resolve legal disputes. The constitutional requirement of "case or controversy" defines the range of issues which may be resolved by the federal judiciary. A judge should not have a personal agenda which affects decision-making.

4. I can think of only two instances in which a departure from a precedent of the Ninth Circuit Court of Appeals would be in order. A departure would be appropriate if the United States Supreme Court subsequently had ruled differently, or if the Congress subsequently had enacted legislation which affected the issue.

### Constitutional Issues

1. It is the duty of a federal district court judge to follow the interpretation of the United States Constitution, as announced by the Court of Appeals for the applicable circuit and the United States Supreme Court. Interpretation of the Constitution is framed by the original intent of the founding fathers, with consideration given to changing circumstances.

2. Congress has enacted federal sentencing guidelines to provide uniformity in the imposition of prison time for like crimes throughout the federal judiciary, and I believe they have been successful in that regard. If confirmed as a federal district court judge, I will be bound by and will apply the federal sentencing guidelines.

  
Helen Gillmor

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

David Allan Katz (use David A. Katz).

2. Address: List current place of residence and office address(es).

**Residence Address:**

3600 Brookside Road, Toledo, Ohio, 43606.

**Office Address:**

608 Madison Avenue, Suite 1000, Toledo, Ohio, 43604.

3. Date and place of birth.

November 1, 1933 - Toledo, Ohio.

4. Marital Status (Include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to the former Joan G. Siegel; she is a homemaker.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received and dates degrees were granted.

The Ohio State University (1951-1955)

B.Sc. in Business Administration (August 1955).

The Ohio State University College of Law (1954-1957),  
Jurisdoctor (summa cum laude) (June 1957).

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor or employee since graduation from college.

(a) Employed as an associate or partner of Spengler Nathanson, and its predecessor firms, from July 1957 to present date; became partner February 1, 1963.

(b) Served as an officer and/or director of Seaway Food Town, Inc., a public corporation, from 1984 to date, without remuneration.

(c) Have been an officer and/or director and/or partner of the following entities:

- (1) The Akers Foundation;
- (2) Blank Underhill Corp.;
- (3) Buckeye Discount, Inc.;
- (4) Campbell Investors (investment partnership which owns real estate in Toledo, Ohio);
- (5) Center for Domestic Arts, Inc. (defunct);
- (6) Champion Breeding Partnership No. 1;
- (7) Champion Breeding Partnership No. 2;
- (8) Ciralsky Steel Service, Inc. (defunct);
- (9) Cofam Enterprises, Inc.;
- (10) The Commercial Electric Co.;
- (11) Custar Pharmacy, Inc.;
- (12) David S. Stone Foundation;
- (13) A. Edelstein & Sons, Inc.;
- (14) 81 Ventures Partnership (defunct);
- (15) Fenaire Corporation;
- (16) Fifth Fjord, Inc.;
- (17) Fifth Fjord Properties of Ohio, Inc.;
- (18) Fjord Properties, Inc.;
- (19) GIL Financial Services, Inc.;
- (20) Gruber's Food Town, Inc.;
- (21) Harry's Clothing, Inc. (defunct);
- (22) Hercules Stamping Co. (defunct);
- (23) ICA-Dallas Limited Partnership (limited partner/investor);
- (24) Incentives for Industry, Inc.;



- (25) Irvington Road Limited Partnership (limited partner/investor);
- (26) Keidan's, Inc. (defunct);
- (27) Keidan's Southland, Inc. (defunct);
- (28) Keidan's Westgate, Inc. (defunct);
- (29) Lucas County Asphalt, Inc.;
- (30) Madison Securities, Inc. (defunct);
- (31) Meilink Industries, Inc. (defunct);
- (32) Midwest Investors (defunct);
- (33) Midwest Stamping & Manufacturing Co. (defunct);
- (34) Northern Distributing Co.;
- (35) Northern Distribution Co.;
- (36) Ottawa River Steel Co.;
- (37) Products Associates Limited Partnership (limited partner/investor);
- (38) Robert's, Inc. (defunct);
- (39) SDP Enterprises (defunct);
- (40) San-Lan Corp.;
- (41) Seaway Properties, Inc.;
- (42) Second Fjord Properties, Inc.;
- (43) Stamp Co., Inc.;
- (44) Stansil Realty Co. (defunct);
- (45) Sycamore Realty Company (defunct);
- (46) T&A Marts, Inc. (defunct);
- (47) Teksonix, Inc. (defunct);
- (48) Thal Realty, Inc. (defunct);
- (49) Thermotics Technology, Inc.;

- (50) Third Fjord Properties Community Urban Development, Inc.;
- (51) Third Fjord Properties, Inc.;
- (52) Toledo Building Services, Inc.;
- (53) Toledo Milk Processing, Inc.;
- (54) Toledo Paper Box Company (defunct);
- (55) Toledo Pickling & Steel Sales, Inc.;
- (56) Tracy & Avery Food Town, Inc.;
- (57) Underhill Steel Corp.;
- (58) VF, Inc. (defunct);
- (59) Varta Industries, Inc.;
- (60) Vikash Corp.;
- (61) Wabash-Lagrange Steel Co. (defunct);

(I have been over the course of my career an officer and/or director of many private companies, all in my practice of law, but I have received remuneration almost exclusively on account of legal fees, not employment or service to the company in any other capacity. I have attempted to search the records of our firm and my memory and have listed what I believe to be if not all, the overwhelming number of entities with which I have been associated in the more than 37 years of law practice.)

7. Military Service: Have you had any military service?

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees and honorary society memberships that you believe would be of interest to the Committee.

Order of Coif (The Ohio State University College of Law).

1967 Harry Levinson Memorial Young Leadership Award  
by Jewish Welfare Federation of Toledo.

1979 Outstanding Citizen Award by State of Israel.

1991 Outstanding Leadership Award - Anti-Defamation League.

1993 Order of the Heel (Awarded to a member of the senior membership of The Toledo Bar Association who has assisted the members of the Junior Bar.)

1993 Distinguished Citizen Award by The Medical College of Ohio

The Ohio State University College of Law, Law Review - Associate Editor.

Sphinx - Senior Honorary - The Ohio State University.

Bucket and Dipper - Junior Honorary -  
The Ohio State University.

Romophos - Sophomore Mens' Honorary -  
The Ohio State University.

Phi Eta Sigma - Freshman Scholastic Honorary -  
The Ohio State University.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member of the American, Ohio and Toledo Bar Associations.

Trustee and/or Secretary of Toledo Bar Association  
(1970-1974).

Toledo Bar Association Foundation - Trustee, President  
(1986 to 1994).

Lawyers' Roundtable of Toledo, Member; Chairman (1992 to 1994); this is a cooperative venture between the Toledo Bar Association and The University of Toledo College of Law. The thrust of the committee is to provide scholarships for minority students at the College of Law and to provide clerkships in area law offices for minority students from the College of Law in an effort to increase the number of minority graduates who remain in Toledo and other northwestern Ohio law firms after graduation.

(Member of various other committees of the Ohio State Bar Association and Toledo Bar Association from time-to-time over past 35 years.)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

(a) AIPAC (to my knowledge, this is the only organization to which I belong which is active in lobbying activities).

(b) All other organizations to which I belong:

- (1) American Bar Association.
- (2) Ohio State Bar Association.
- (3) Toledo Bar Association.
- (4) St. Vincent Medical Center -  
Trustee and Vice Chairman of the Board of Trustees.
- (5) Northwest Ohio Heart Center -  
Chairman of the Board of Directors.
- (6) B'nai Brith.
- (7) Men's Club of Temple B'nai Israel.
- (8) Temple B'nai Israel.
- (9) Toledo Museum of Art.
- (10) President's Club of The University of Toledo.
- (11) President's Club of The Ohio State University.
- (12) Anti-Defamation League.
- (13) Life Member - Hadassah.
- (14) Toledo Zoological Society.
- (15) St. Vincent Medical Center Foundation - Trustee.
- (16) The Inverness Club.
- (17) The Toledo Club.
- (18) Toledo Symphony Orchestra, Gold Baton Circle.
- (19) Jewish Federation of Greater Toledo.
- (20) American Arbitration Association.



11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses, if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Ohio (and all Ohio courts) (August 1957).

United States District Court for the Northern District of Ohio, Western Division (1959).

United States Tax Court (1968).

12. Published Writings: List the titles, publishers and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

(a) "Constitutional Law - Air Commerce - Has Congress pre-empted its control?" (17 Ohio State Law Journal 144) (1956).

(b) "Torts - Negligence - Intervening Agency Capable of Eliminating Existing Hazard" (17 Ohio State Law Journal 244) (1956).

(c) "Substantive Due Process in the States Revisited" (18 Ohio State Law Journal 384) (1957).

(d) In addition to the foregoing, I have given numerous talks to the Toledo Bar Association at special programs, or noon Continuing Legal Education programs, primarily on the issues of tax law, buying and selling businesses and drafting and negotiating leases for real property. None of these CLE speeches involve constitutional law or legal policy and I have not retained copies of any notes or outlines of those speeches.

13. Health: What is the present state of your health? List the date of your last physical examination.

My present health is excellent and my last physical was in June 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Have neither run for nor held elective public offices. However, have been Chairman of the Electric Franchise Review Committee of the City of Toledo (1990-1992) by appointment of the Mayor and confirmation by the Council. Also served as Chairman of the City of Toledo Negotiating Team on Electric Rates and Franchise, having been so appointed and served in 1992. I served as Chairman of the City of Toledo reconstituted Electric Franchise Review Committee for the purpose of studying Phase II of the activity with regard to independent, municipally owned, or controlled service, a position I surrendered in November 1993.

17. Legal Career:

a. Describe chronologically your legal career after graduation from law school including:

1. whether you served as clerk to a judge and, if so, the name of the judge, the court and the dates of the period you were a clerk;

I did not serve as a clerk to any judge.

2. whether you practiced alone and, if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

From July 1957 to the present time, I have been associated with Spengler Nathanson (fka Spengler, Nathanson, Heyman, McCarthy & Durfee and Spengler, Nathanson, Hebenstreit & Heyman), 608 Madison Avenue, Suite 1000, Toledo, Ohio, 43604.

Associate from 1957 through 1962.

Partner from 1963 to present time.

Chairman of firm (Managing Partner) from February 1, 1987, to June 30, 1993.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general character of my law practice may be described as follows:

(1957-1963) General practice of law with emphasis in litigation, business and tax matters.

(1962-1975) Primarily tax and securities practice, a business attorney with some remaining litigation matters.

(1975 to present) Business law, with some business litigation into the early 1980's. Primarily a business and corporate lawyer and adviser with tax and securities orientation. Spent considerable time from 1973 to present in advising, negotiating and concluding disposition and acquisition of businesses.

2. Describe your typical former clients and mention the areas, if any, in which you have specialized.

Typical clients and the areas in which I have specialized may be described as follows:

Typical clients have been locally-owned or, at least, locally-operated small to medium-size business entities, as well as professional firms in northwestern Ohio. I have represented some public companies and have represented three (3) public companies in taking their stock public through public offerings. Specialized in tax and securities areas; from 1972 to 1992 did a

significant number of Industrial Revenue Bond offerings representing the companies for which bonds were sold.

- c. 1. Did you appear in court frequently, occasionally or not at all?

From 1957 to approximately 1964, I appeared in court frequently; thereafter, occasionally through the early 1980's; and, thereafter, made few court appearances, the last in 1989 in a trial before an Administrative Judge of the Drug Enforcement Administration, Washington, D.C. and the ensuing appeal.

2. What percentage of these appearances was in:
- (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

The percentage of the foregoing appearances would be described as follows:

- (a) Federal courts - approximately 15%.
- (b) State courts of record - approximately 85%.
- (c) United States Tax Court - it was necessary to try only one case.

3. What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

Percentages of litigation were:

- (a) 100% was civil, except
- (b) I handled a significant number of quasi-criminal cases in the late 1950's and early 1960's related to defense against enforcement of Ohio's "Sunday closing" laws ("Blue laws"). In addition, handled criminal tax fraud matters which were resolved before any court action was filed by the Internal Revenue Service or the federal government.

4. State the approximate number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel or associate counsel.

I tried approximately 20 cases to verdict, in the majority of which I was sole counsel; of the balance, in all but the first few cases I was chief counsel.

As noted in the answer set forth as 3(b) above, I personally was counsel to the defendants and, in some instances, appellants in many cases involving Ohio's "Sunday Closing" laws ("Blue Laws"). I have described these as quasi-criminal and the trials thereto, in most instances, were not protracted, lasting from one-half (1/2) hour to one-half (1/2) day. My estimate is that there were between 75 and 100 of these cases with which I was involved. No jury was ever involved.

5. What percentage of these trials was:
  - (a) jury;
  - (b) non-jury.

The percentage of these trials were:

- (a) 10% to 15% jury cases.
- (b) 85% to 90% non-jury cases.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case.

- (a) Armstrong v. Marathon Oil Company, United States Federal District Court, Northern District of Ohio, Western Division, Civil Case No. C82-25 (1982); I represented the plaintiff, a representative of the class of minority shareholders in an action to obtain an order requiring the defendant to produce a shareholder list so that minority and dissenting shareholders could contact those shareholders. The matter resulted in the court ordering the delivery of the shareholders' list to our clients. The matter was tried to the Honorable Don J. Young. I was chief counsel for the plaintiff and was assisted by Truman A. Greenwood, Esq. of our office. Chief counsel for the defendant was John Strauch, Esq. of Jones, Day, Reavis & Pogue, North Point, 901 Lakeside Avenue,



Cleveland, Ohio, 44114, (216) 586-3939; local counsel for defendant was Richard S. Walinski, Esq. of Cooper, Straub, Walinski & Cramer, 900 Adams Street, Toledo, Ohio, 43624, (419) 241-1200.

- (b) Robinson v. Commercial Motor Freight, Inc., 174 O.St. 498 (1963). This was an action arising out of the filing of a petition in the Common Pleas Court of Hancock County, Ohio, on behalf of three (3) plaintiffs against Commercial Motor Freight, Inc.; I represented the insurer, United States Fidelity & Guaranty Company. Based upon the then existing law, which had been the law of the State of Ohio for over 100 years, upon motion of the defendants, the trial court dismissed the actions as not having properly been commenced within the time frame of the statute of limitations; the ruling of the lower court was upheld by the Court of Appeals. However, a divided Supreme Court of Ohio reversed and changed the law of Ohio, ignoring the controlling statute; the legislature thereafter changed the statute governing commencement of an action to conform to the Supreme Court's holding. The case at the trial court level was heard by Honorable Dwight Moorehead (now deceased). I handled the matter without co-counsel. Counsel for the defendants were John C. Firmin, Esq. of Firmin, Sprague & Huffman Co., L.P.A., 220 W. Sandusky Street, Findlay, Ohio, 45840, (419) 423-4321, and Garver Oxley, Esq. of Oxley, Malone, Fitzgerald & Hollister, 301 E. Main Cross Street, Findlay, Ohio, 45839, (419) 422-8713.

- (c) The State of Ohio v. Family Fair, Inc., et al., 171 O.St. 322 (1960). I represented the appellant, Family Fair, Inc., and an employee, which had been accused of opening on Sunday in violation of the laws of the State of Ohio prohibiting the operation of businesses on Sundays. The Municipal Court of Toledo found the defendants guilty and imposed a fine; the defendants contended that the statute involved was unconstitutional but the Court of Appeals affirmed the Municipal Court. The Ohio Supreme Court dismissed the appeal for the reason that no debatable constitutional issue was deemed to be involved. The matter was appealed to the United States Supreme Court, but was never argued as one case in this area of the law (among several cases then pending) was chosen for argument and the United States Supreme Court in a Massachusetts case upheld the validity of the Massachusetts law and dismissed the appeal in the Ohio cases. The case was tried at the trial court level before the Honorable Frank Wiley (deceased). I did not have co-counsel. Counsel for the City of Toledo was Frank T. Pizza, Esq., now a partner in the law firm of

Spengler Nathanson, 608 Madison Avenue, Suite 1000, Toledo, Ohio 43604, (419) 241-2201.

- (d) Sam's Bennett Road Drugs, Inc., et al. before the Drug Enforcement Administration ("DEA") of the United States Department of Justice, Docket Nos. 88-20, 88-21 and 88-22 (1988). These matters included the attempt by the DEA to terminate the licenses of three (3) drug stores owned by a single common owner due to alleged violations of state and federal drug control laws and regulations. After trial before the Administrative Judge in Washington, D.C. in early 1990, at which the DEA's position was sustained, the matter went through an internal appeal, a Motion for a stay before the United States Court of Appeals for the Sixth Judicial Circuit and was finally resolved by mutual agreement between the defendants and the DEA pursuant to which the defendant's licenses were permitted to remain in place for a sufficient period of time to permit an orderly sale of the entities and/or assets and the license of the pharmacist/sole shareholder/principal officer was retained by him. I was sole counsel for defendants, while David Bybee, Esq., now of the Department of Justice, Washington, D.C., (202) 514-0946, was counsel for DEA.
- (e) Ardela, Inc., et al. v. Commissioner of Internal Revenue, United States Tax Court Docket Nos. 5629-67, 5630-67, 5633-67 and 5634-67 (TC Memo 1969-83). Four (4) related entities claimed bad debt deductions for indebtedness owed them by a related entity. The four (4) entities were Ardela, Inc., the Sycamore Realty Company, Rutland Corporation, and Pivot, Inc., and the related entity was Rush Stamping Company. After trial, the Tax Court found that the losses were not ordinary losses, but were capital losses. I was sole counsel for the taxpayers and Harvey N. Shapiro, Esq., of Regional Counsel's Office of the Internal Revenue Service, was counsel for the government.
- (f) Harry King Size Company of Brochton, Massachusetts v. Harry's Clothing, Inc., United States District Court, Detroit, Michigan (1977). This matter involved the alleged infringement of a trade name; our client, the defendant, had, since the 1940's, operated Big & Tall Stores under the name of Harry's King Size. After lengthy trial, Judge Joiner held in favor of the plaintiff, but the matter was settled before appeal satisfactorily to both parties. I was co-counsel with Theodore M. Rowen, Esq., of Spengler Nathanson; defense counsel was Alan L. Lefkowitz, Esq., now of the firm of Dechert Price & Rhoads, Ten Post Office Square South, Boston, Massachusetts, (617) 728-7100.

- (g) Harry's Clothing, Inc. v. Shamas, Common Pleas Court of Lucas County, Ohio, Case No. 73-1745 (1973). David A. Katz and Theodore M. Rowen, of Spengler Nathanson, represented the plaintiff, which sued for Temporary Restraining Order and permanent injunction; the defendant was alleged to have violated the terms of an Employment Agreement, which contained a non-competition provision. Plaintiff prevailed at trial. Defense counsel was Arthur James, Esq., of Toledo, Ohio, no longer practicing law.
- (h) State of Ohio v. Board of County Commissioners of Ottawa County, Ohio, [Common Pleas Court of Ottawa County, Case No. 17613; Court of Appeals for the Sixth Judicial Circuit of Ohio, Case No. 446 (1972)]. David A. Katz and Theodore M. Rowen, of Spengler Nathanson, represented the State of Ohio in an action against the County Commissioners of Ottawa County for failure to pay the State of Ohio for road repairs. Summary judgment was granted by the Common Pleas Court of Ottawa County for the defendants, but plaintiff was awarded judgment by the Court of Appeals and the defendant's appeal to the Ohio Supreme Court was dismissed by that court. Defense counsel was Lowell S. Petersen, Esq., now Ottawa County Prosecutor, Ottawa County Courthouse, Port Clinton, Ohio, 43452, (419) 734-6846.
- (i) Gus County, Jr. v. Piorkowski, Common Pleas Court of Lucas County, Ohio, Case No. 184544; Court of Appeals No. 5278 (1959). I represented United States Fidelity and Guaranty Company ("USF&G"), which had issued a performance bond to the defendant; I was retained to intervene as a third party defendant and file a Cross Claim against defendant Piorkowski seeking to set aside a deed and mortgage for fraud and impress a lien. After trial of approximately one (1) week, USF&G was granted a judgment, which was upheld through appeals in the Lucas County Court of Appeals, the Ohio Supreme Court and an attempt to have the final appeal heard by the United States Supreme Court. I acted as counsel for USF&G. Counsel for other plaintiffs included David Goldberg, Esq. and Joseph Jan, Esq., both of whom are deceased, while counsel for defendant was Harry Mee, Esq. and Steven Markowski, Esq., both deceased.
- (j) Steinberg v. Bellro Limited Partnership, et al., United States District Court, Northern District of Ohio, Western Division (C75-180, 1975). Plaintiff, represented by David A. Katz and Theodore M. Rowen of Spengler Nathanson, filed an action against the defendants for illegal sale of limited partnership interests and subsequent unlawful alteration of the plaintiff's interest in that partnership. The matter was settled

just prior to trial when the defendants permitted plaintiff recision. Counsel for the defendants were T. Scott Johnson, Esq., of Cooper, Straub, Walinski & Cramer, 900 Adams Street, Toledo, Ohio, 43603, John T. Landwehr, Esq., Eastman & Smith, One SeaGate, 24th Floor, Toledo, Ohio, 43699, and Lawrence S. Schultz, Esq., then of 4200 Penobscot Building, Detroit, Michigan.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Among the most significant legal activities which were undertaken in my career of over 35 years, included representation of companies and individuals in federal income tax fraud cases and the civil matters arising therefrom. In addition, in 1957, I worked with a senior member of the firm in consolidating seven corporations into Seaway Food Town, Inc., a supermarket and drug discount chain; in 1962, I participated in the initial public offering of the stock of that company and handled alone in 1968 the second public offering of that stock. I have been general counsel to that firm for many years and have been Secretary and a member of the Board of Directors for several years.

I also participated in the handling of several significant sales of businesses and acquisitions of businesses in northwestern Ohio, including the following: 1973 - The sale of the stock of Northwestern Ohio Steel Company to National Steel Company in a non-taxable reorganization; 1975 - The sale of the assets of Toledo Pickling & Steel Service, Inc. to Usinor Steel Company for approximately \$9 million; 1986 - The sale of the assets of Great Lakes Window, Inc. to Ply Gem Industries, Inc. for approximately \$22 million; 1990 - Represented new company in the acquisition of assets of Midwest Stamping & Manufacturing Co. for approximately \$41 million; 1992 - Represented Harry's Clothing, Inc. (a 40 store big and tall men's clothing chain) in the sale of its assets to Edison Brothers, Inc., a publicly-held company whose stock is traded on the New York Stock Exchange, for approximately \$12 million; and, 1993, concluded the negotiation and execution of an agreement for the sale of assets through merger of a group of companies for a total of approximately \$81 million; and, in 1994, participated as company counsel in the reorganization of companies into N-Viro International Corporation and the public offering of approximately \$20,000,000 of its common shares, now listed on the National Market System of NASDAQ.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

The termination benefits which I have and anticipate being paid are solely from the law firm of which I am a partner. I will have return of my capital account of \$70,000, immediately upon being sworn in, and payment, over a period of time not exceeding five (5) years, of \$286,726. During any payment period, it is clear from the Code of Judicial Conduct that the firm will not be able to appear before me. I will adhere to the Code of Judicial Conduct. I also have been a member of a retirement plan, which will continue to accrue interest and other benefits of investments, but to which no additional contributions will be made by me; this was a plan funded solely by contributions made by me. The only other sources of income which I have include a minority interest in a real estate general partnership, which owns a factory building and leases it to a corporation, and very small minority interests in limited partnerships, which own real estate, all but one of which were public partnerships and which will not have the risk of conflict.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Except for the financial arrangements upon termination from my law firm, as outlined in paragraph 1 above, I have no other financial arrangements which are likely to present conflict of interest problems. It is possible that some cases which come before me during my early service would involve former clients of mine or the firm of which I am a presently a member and/or former legal associates. I will handle those cases in accordance with the Code of Judicial Conduct and recuse myself not only where necessary, but where I deem the appearance of conflict of interest to be present.



3. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Attached hereto and incorporated by reference is Form AO-10.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).
6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have been involved in several political campaigns over the years, but never have played any significant role as an officer, director, associate director or other similar position. My name has been used in advertising for the purpose of showing support (always with many other names). I do not believe that any role which I have played would have been deemed significant under any circumstances, since they were primarily roles of providing the forum for fundraising activities for the candidates, never as an officer or a director of any campaign.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

I have been active within the Toledo Bar Association and have been a participant in "Law Tuesday," a program for providing free legal services to the poor; have, until recently, been president of the Toledo Bar Association Foundation; I have been an Arbitrator for the American Arbitration Association and have been trained as an Early Neutral Evaluator for that program for the U.S. District Court for the Northern District of Ohio. For over thirty years I have been an active participant in charitable activities in both the general and Jewish communities of Toledo and, in some instances, national efforts. I was a board member of Jewish Family Service, offering help to many within the community; was President of the Jewish Welfare Federation of Greater Toledo from 1976 to 1979 and remain active in that organization, which is the central agency for both fundraising and providing of services to the Jewish community. I have been very active for the last eight years at St. Vincent Medical Center, one of the largest tertiary care hospitals in northwestern Ohio and the leading provider of charitable care in Toledo and northwestern Ohio; have worked at the soup kitchen sponsored by St. Paul's and St. Patrick's; and have been active in many other charitable endeavors of the community.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?

I do not currently belong, nor have I belonged, to any organization which discriminates through either formal membership requirements or the practical implementation of membership policies.

I am a golf member of Inverness Club. The Club has members of both sexes and many different races and religions. There are, however, some restrictions imposed on non-certificate members;

spouses and family members of certificate holders may not play between 11:45 a.m. and 3:00 p.m. weekdays, before 2:00 p.m. on Saturdays and before 11:30 a.m. Sundays. The Club also has reserved times for "18 hole" women golfers, "9 hole" women golfers, juniors and "AARPYS" (seniors). The Club's printed tennis rules give priority in the use of courts to male players; however, I have been advised that since the rule has not been adhered to in practice, the Board has revoked it. The Grill Room is utilized solely by men. There are other rooms within the facility for women card players. I also belong to the Toledo Club, which does have a small men's grill.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

The only selection commission or committee of which I am aware is the Judicial Candidates Committee of the Toledo Bar Association, which interviewed me on May 18, 1993. The committee found me "well qualified" to serve as a Judge of Federal District Court.

I was aware that there are two vacancies on the United States District Court for the Northern District of Ohio, Western Division (Toledo, Ohio) and determined on December 18, 1992, to apply for that position. I wrote a letter to Senator Howard M. Metzenbaum and a letter to Senator John Glenn to pursue that position. I was interviewed by two members of the staff of Senator Metzenbaum (William Corr, Esq. and Gail Laster, Esq.) in Washington, D.C. on the afternoon of January 29, 1993, and by representatives of the staffs of both Senators Glenn and Metzenbaum in Cleveland, Ohio, on the afternoon of March 5, 1993, in Cleveland, Ohio. Additionally, I was interviewed by telephone on two or three occasions by either or both of Mr. Corr and Ms. Laster. After being designated by the Senators, I was separately interviewed by representatives of the Department of Justice and the F.B.I. in August and September 1993, and by representatives of the Standing Committee on Federal Judiciary of the American Bar Association on October 23, 1993, and April 4, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- (a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- (b) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- (c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- (d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- (e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Subject to determination of jurisdiction and standing to sue, the role of the judiciary and, in particular, district courts, is to interpret the law; the role of the legislature is to legislate. The division of power among the three (3) branches of our government, with its constitutional system of checks and balances must be recognized and honored. In many instances over the past 50 years, it has been necessary for the federal judiciary to create the necessary impetus which gives rise to the changes required under the Constitution and to "encourage" compliance therewith by state governments reluctant to do so and, in some instances, "prohibited" by local or state laws. This is particularly true in the instances of the rights of minorities and the rights of the accused in criminal cases.

While the principle of stare decisis is long recognized in Western law and precedent must be jealously respected, the judiciary also must occasionally revisit previously-decided issues, so as to permit justice to be done in current society. A prime example is the 1954 decision of the United States Supreme Court in Brown v. Board of Education, 347 U.S. 483

(1954). Our constitution must be viewed as flexible and vibrant and the Brown case is an example of that recognition.



## David A. Katz and Joan S. Katz

Financial Statement  
Net Worth

July 31, 1994

<u>Assets</u>		<u>Liabilities</u>	
Cash on hand and in banks	10,000.00	Notes payable to banks (secured)	
U.S. Government securities (add schedule)		Notes payable to banks (unsecured)	360,000.00
Listed securities (add schedule)	89,717.00	Notes payable to relatives	
Unlisted securities (add schedule)		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	1,500.00
Due from relatives and friends	15,000.00	Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful	50,000.00	Real estate mortgages payable (add schedule)	210,000.00
Real estate owned (add schedule)	325,000.00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts (itemize):	
Autos and other personal property	95,000.00	Charitable pledges	20,000.00
Cash value - Life insurance	110,000.00		
Other assets (itemize):			
Retirement plan	766,518.00	Total liabilities	591,500.00
Law firm interest	350,000.00	Net worth	1,399,735.00
Partnership interests (real estate)	180,000.00	Total liabilities and net worth	1,991,235.00
<b>Total Assets</b>	<b>1,991,235.00</b>		

Contingent Liabilities

As endorser, co-maker or guarantor	
On leases or contracts	
Legal claims	
Provision for federal income tax	150,000.00
Other special debt	

General Information

Are any assets pledged? (add schedule)	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No

## David A. Katz and Joan S. Katz

## Schedules to Financial Statement

July 31, 1994

## (A) Listed Securities:

(W) Blackrock 2001 Term Trust, Inc.	4,000.00
(W) Bristol Myers Squibb Co.	2,681.00
(W) Global Yield Fund	6,500.00
(W) High Income Advantage Trust III Shares Beneficial Interest	9,588.00
(W) High Yield Income Fund	20,971.00
(W) N-Viro International Corporation (600 shares)	2,100.00
(W) Source Capital Incorporated	8,200.00
(W) Union Electric Company Preferred \$7.44 Callable	9,850.00
(W) Seaway Food Town, Inc. (1,033 shares)	11,300.00
(W) Thomson Equity Income Fund B	4,326.00
(W) Thomson Growth Fund B	4,456.00
(W) Thomson Target Fund Class B	<u>5,745.00</u>
	89,717.00

(B) Real estate owned - home - Joan S. Katz  
3600 Brookside Road, Toledo, Ohio, 43606

(C) Real estate mortgage payable on home to  
Fifth Third Bank, Northwest - \$210,000.00

AD-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial.)  Katz, David A.	2. Court or Organization U.S. District Court Northern District of Ohio, Western Division	3. Date of Report  8/22/94
4. Title (Article III Judges indicate active or senior status. Magistrate Judges indicate full- or part-time.)  District Court Judge - Active	5. Report Type (check appropriate type) Y. Nomination, Date <u>8/12/94</u> ___ Initial ___ Annual ___ Final	6. Reporting Period  1/1/93 - 7/31/94
7. <del>Current</del> Office Address - Current 608 Madison Avenue, Suite 1000 Toledo, Ohio 43604-1169	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Partner	Spengler Nathanson (attorneys)
Executor	Herman Cohn Estate
President	Toledo Bar Association Foundation

(See continuation on attached page.)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☐

NONE (No reportable agreements)

1/1/94	Spengler Nathanson, law firm of which I am a partner; the Partnership Agreement provides for return of my capital account of \$70,000 immediately upon confirmation and, thereafter, payment of withdrawal benefit of \$286,000 in installments over a period not exceeding five (5) years.
--------	---

(See continuation on attached page.)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income.)

1	Spengler Nathanson - Partner income	\$	466,252
2	David S. Stone Foundation - Director's fee	\$	1,000
3	Stockwell & Cooperman - Disbursing agent for	\$	
4	parties to arbitration (arbitrator)	\$	3,150
5	Toledo Building Services Co. - Director's fee	\$	3,800

<u>Name of Person Reporting</u> David A. Katz	<u>Date of Report</u> 8/22/94
--	----------------------------------

## FINANCIAL DISCLOSURE REPORT

## I. POSITIONS (Continued - Page 1)

<u>Position</u>	<u>Name of Organization/Entity</u>
Trustee	Joel B. Friedman Irrevocable Insurance Trust
Trustee	James J. Akers Irrevocable Insurance Trust
Trustee	Joel A. Levine Irrevocable Insurance Trust
Trustee	Gordon I. Levine Irrevocable Insurance Trust
Chairman and Trustee (previously Vice Chairman and Treasurer)	St. Vincent Medical Center Board of Trustees
Chairman and Trustee	St. Vincent Medical Center Foundation
Vice President and Trustee	David S. Stone Foundation
Trustee	The Toledo Jewish Community Foundation
Secretary	The Akers Foundation
Secretary	Blank/Underhill Corp.
Partner	Campbell Investors
Secretary	Cofam Enterprises, Inc.
Secretary and Director	The Commercial Electric Company
Secretary and Director	Custer Pharmacy, Inc.
Secretary and Director	A. Edelstein & Son, Inc.
Secretary and Director	Fifth Fjord, Inc.

<u>Name of Person Reporting</u>	<u>Date of Report</u>
David A. Katz	8/22/94

## FINANCIAL DISCLOSURE REPORT

## I. POSITIONS (Continued - Page 2)

<u>Position</u>	<u>Name of Organization/Entity</u>
Secretary and Director	Fifth Fjord Properties of Ohio, Inc.
Secretary and Director	Fjord Properties, Inc.
Secretary and Director	GIL Financial Services, Inc.
Secretary and Director	Gruber's Food Town, Inc.
Secretary and Director	Harry's Clothing, Inc.
Secretary and Director	Incentives for Industry, Inc.
Secretary and Director	Lucas County Asphalt, Inc.
Vice President and Assistant Secretary	Midwest Stamping & Manufacturing, Inc.
Trustee	Midwest Stamping Investors Trust (defunct)
Secretary	San-Lan Corp.
Secretary and Director	Second Fjord Properties, Inc.
Secretary and Director	Seaway Food Town, Inc.
Assistant Secretary and Director	Sycamore Realty Company
Secretary and Director	Third Fjord Properties, Inc.
Secretary and Director	Third Fjord Properties Community Urban Development, Inc.
Secretary and Director	Toledo Building Services Co.
Secretary and Director	Toledo Milk Processing, Inc.
Secretary and Director	Toledo Pickling & Steel Sales, Inc.



<u>Name of Person Reporting</u>	<u>Date of Report</u>
David A. Katz	8/22/94

## FINANCIAL DISCLOSURE REPORT

## I. POSITIONS (Continued - Page 3)

<u>Position</u>	<u>Name of Organization/Entity</u>
Secretary and Director	Underhill Steel Corp.
Director	Varta Batteries, Inc.
Secretary	Vikash Corporation
Secretary and Director	Buckeye Discount, Inc.
Secretary and Director	Northern Distributing Co.
Secretary and Director	Northern Distribution Co.
Secretary and Director	Seaway Properties, Inc.
Secretary and Director	Tracy & Avery Food Town, Inc.

<u>Name of Person Reporting</u>	<u>Date of Report</u>
David A. Katz	8/22/94

## FINANCIAL DISCLOSURE REPORT

## II. AGREEMENTS (Continued - Page 1)

DateParties and Terms

2/1/65

The firm has a retirement plan of which Fifth Third Bank is Trustee and to which I have contributed since its inception; all contributions were by me, none by firm. Those assets will continue to be managed/administered by the Trustee.

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Katz, David A.

Date of Report

8/22/94

**IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1		Exempt
2		
3		
4		
5		
6		
7		
8		

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1		Exempt	\$
2			\$
3			\$
4			\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☐

NONE (No reportable liabilities)

1	Fifth Third Bank (J)	Unsecured loans	M
2	Huntington National Bank	Unsecured loans	K
3	Society Bank	Unsecured loans	K
4	National City Bank	Unsecured loans	L
5	Jewish Federation of Greater Toledo (J)	Charitable pledges	J
6	St. Vincent Medical Center Foundation	Charitable pledges	J

(Continued on attached page.)

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

<u>Name of Person Reporting</u>	<u>Date of Report</u>
David A. Katz	8/22/94

## FINANCIAL DISCLOSURE REPORT

## VI. LIABILITIES (Continued - Page 1)

<u>Creditor</u>	<u>Description</u>	<u>Value Code</u>
Yale M. Feniger	Unsecured loan	None
Robert J. Stelzer	Unsecured loan	None

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Katz, David A.

Date of Report

8/22/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical "(1)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	If not exempt from disclosure					
	Am. Code (A-H)	Type (e.g., div., rent, or Int.)	Value Code (J-P)	Value Method Code (Q-W)	(1) Type (e.g., buy, sell, transfer, redemption)	(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)					Exempt					
1 Campbell Investors	E	Rents	L	W						
2 Irvington Road Limited Partnership	A	None	K	W						
3 Products Associates Limited Partnership	H	Rents	K	W						
4 ICA Dallas Associates Limited Partnership	A	Passive Loss	K	W						
5 Spengler Nathanson Self-Employee										
6X Profit Sharing Plan Fifth Third Bank of Northwestern Ohio, N.A., Trustee	A	Retirement Plan	G	T						
7X Blackrock 2001 Term Trust, Inc. (S)	A	Div.	C	T						
8X Bristol Myers Squibb Co. (S)	A	Div.	C	T						
9X Global Yield Fund (S)	A	Div.	D	T						
10X High Income Advantage Trust III (S)	B	Div.	D	T						
11X High Yield Fund (S)	C	Div.	E	T						
12X N-Viro International, Inc. Common shares (S)	A	Div.	D	T						
13X Source Capital, Inc.	A	Div.	D	T						
14X Union Electric Company (Preferred Stock) (S)	A	Div.	D	T						
15X Seaway Food Town, Inc. (Common) (S)	A	Div.	D	T						
16X Thomson Equity, Inc. Fund B-A	A	Div.	C	T						
17X Thomson Growth Fund B	A	Div.	C	T						
18X Thomson Target Fund B	A	Div.	D	T						
20 (See list attached.)										

1 Income/Gain Codes:	A=\$1,000 or less (See Col. B1 & B4)	B=\$1,001 to \$2,500 P=\$25,001 to \$50,000	C=\$2,501 to 5,000 D=\$100,001 to \$1,000,000	D=\$5,001 to \$15,000 E=More than \$1,000,000
2 Value Codes:	J=\$15,000 or less (See Col. C1 & D1)	K=\$15,001 to \$50,000 R=\$250,001 to \$500,000	L=\$50,001 to \$100,000 Q=\$500,001 to \$1,000,000	M=\$100,001 to \$250,000 P=More than \$1,000,000
3 Value Method Codes:	Q=Appraisal (See Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated X=Cash/Market



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Katz, David A.

Date of Report

8/22/94

## VII. INVESTMENTS AND TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.) (Continuation-Page 2)

Indicate, where applicable, owner of the asset by using the parenthetical (S) for joint ownership of reporting individual and spouse, (J) for separate ownership by spouse, (DC) for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Amt. Code (A-H)	(2) Type (e.g., div., rent or Int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-V)	If not exempt from disclosure					
					(1) Type (e.g., buy, sell, margin, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
18 Xx Alabama Power Co. (S)	A	Bonds	None							
9 Xx Prudential-Bache Money Mart Assets Fund (S)	B	Mkt.	C	T						
10 Xx Columbus & Southern Ohio Electric Co. (S)	A	Bonds	None							
11 Xx Consolidated Edison New York (S)	B	Bonds	None							
12 Xx Consolidated Natural Gas Co. (S)	A	Deb.	None							
13 Xx Duke Power Co. (S)	A	Bond	None							
14 Xx Florida Power & Light Co. (S)	A	Bond	None							
15 Xx Philadelphia Electric Co. (S)	B	Bond	None							
16 Xx Pacific Gas & Electric (S)	A	Pref.	None							
27 Xx Beneficiary of Herman Cohn Estate (S)	A	Estate	K	W						
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										

1 Income/Gain Codes: (See Col. B) & (4)	A-\$1,000 or less B-\$15,001 to \$50,000 C-\$51,000 or less	B-\$1,001 to \$2,500 F-\$50,001 to \$100,000 F-\$15,001 to \$50,000	C-\$2,501 to 5,000 G-\$100,001 to \$1,000,000 L-\$50,001 to \$100,000	D-\$5,001 to \$15,000 H-More than \$1,000,000 N-\$100,001 to \$250,000
2 Value Codes: (See Col. C) & (3)	J-\$15,000 or less K-\$250,001 to \$500,000	L-\$15,001 to \$50,000 O-\$100,001 to \$1,000,000	P-more than \$1,000,000	
3 Value Method Codes: (See Col. C2)	Q-Appraisal U-Book Value	R-cost (real estate only) V-Other	S-Assessment W-Estimated	T-Cash/Market

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Katz, David A.

Date of Report

8/22/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

---

---

---

---

---

---

---

---

---

---

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

David A. Katz

Date 8/22/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

Responses of David A. Katz to Questions of Senator PresslerExclusionary Rule

- 1) I believe that the facts of each case must be examined in light of the controlling law, in this instance the precedents of the Sixth Circuit and the Supreme Court. If confirmed, I will follow these precedents, including the Leon case.
- 2) It would appear to me that the Leon case should suffice; the proposal could add an unreasonable burden to the process.

Death Penalty

- 1) The Supreme Court has made clear that the death penalty does not violate the Eighth Amendment.
- 2) None whatsoever.

Habeas Corpus

- 1) The U.S. Supreme Court has already addressed a number of aspects of habeas corpus reform and I will adhere to those decisions and any statutory changes made by Congress.
- 2) Since the cases arise through the state system, it would appear appropriate that the state courts should pass on the issues before prisoners are permitted to resort to the federal courts.
- 3) As long as the time frame is measured from an appropriate touchstone, such as final state action after appeal, a time limitation could prove workable.

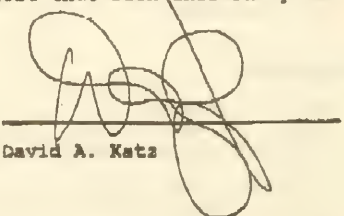
Role of a Federal Judge

- 1) If it were a case of statutory interpretation or applicability, I would first look to the plain words of the statute. If the meaning were unclear, I would then look to the legislative history. I would also examine analogous statutes and cases interpreting them, and general principles of law in the area. These "sources" should enable me, if confirmed, to craft a legal opinion.
- 2) Yes.

- 3) Any political views of the judge are irrelevant to the facts and law of the case.
- 4) Almost never. In that rare case where departure might be appropriate, a district judge could draft the opinion so as to highlight the need to consider departure from established case law, and thus encourage further consideration by the appellate court.

#### Constitutional Issues

- 1) I believe that original intent is important and instructive in providing guidance when interpreting the constitution. Our constitution must have (and has had) enough elasticity to reflect to some extent our changing society. Brown v. Board of Education is a case in point.
- 2) If the intent of the Guidelines was uniformity, then the reports I have read would suggest that such uniformity has been accomplished.



---

David A. Katz

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names used.)

Sean Joseph McLaughlin

## 2. Address: List current place of residence and office address(es).

Home:

4870 Watson Road  
Erie, Pennsylvania 16505

Office:

Knox McLaughlin Gornall & Sennett, P.C.  
120 West Tenth Street  
Erie, Pennsylvania 16501

## 3. Date and place of birth.

January 4, 1955  
Erie, Pennsylvania

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Spouse's Name: Ann Phalon McLaughlin  
Occupation: Realtor  
Employer: Prudential Prozan and LaJohn Realtors  
2741 W. 8th Street  
Erie, Pennsylvania 16505

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Georgetown University, A.B. 1977  
(August 1973-May 1977)

Georgetown University Law Center, J.D. 1980  
(August 1977-May 1980)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.



1978, 1979

KNOX McLAUGHLIN GORNALL & SENNETT, P.C. - Summer legal intern

June 1980 - August 1981

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA - Law Clerk to the Honorable William W. Knox

September 1981

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA - Temporary law clerk to the Honorable Gerald J. Weber and the Honorable Maurice B. Cohill

October 1981 - Present

KNOX McLAUGHLIN GORNALL & SENNETT, P.C.- practicing attorney (partner since 1987)

1987 - Present

GREATER BAY PROPERTIES - Real Estate Partnership comprised of four individuals

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Valedictorian of high school class

Appointed to serve on a state-wide bar committee codifying the Pennsylvania Rules of Evidence

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

(1) Erie County Bar Association (member of Executive Committee 1993-1996);

(2) Erie County Bar Association (1980 - Present);

Sean J. McLaughlin

- (3) Legal Aid Volunteer Attorneys Program (1981 - Present);
- (4) Pennsylvania Bar Association (1980 - Present);
- (5) American Bar Association (1980 - Present);
- (6) Civil Rules Committee of the Erie County Bar Association (1987, 1993);
- (7) I spoke at the Pennsylvania convention of school district administrators on March 24, 1993 on the subject of sexual harassment under the federal civil rights laws;
- (8) I am a member of the Practicum Program of the Erie County Bar Association and have lectured on Federal practice and procedure.
- (9) I have spoken on Title I of the Americans with Disabilities Act at various seminars.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any laps of membership. Give the same information for administrative bodies which require special admission to practice.

- (1) All Pennsylvania state and appellate courts - admitted December 2, 1980;
- (2) United States District Court for the Western District of Pennsylvania - admitted December 9, 1980;
- (3) United States Court of Appeals for the Third Circuit - admitted March 19, 1986;
- (4) United States District Court for the Western District of New York - admitted Pro Hac Vice February 26, 1991;
- (5) United States Supreme Court - admitted January 9, 1989.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Attached is a copy of a monograph titled Overview of Title I of the Americans with Disabilities Act which was distributed at various seminars where I spoke on the Act.

I have not retained any other notes or outlines which I prepared in connection with speeches given at seminars in which I participated.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. My last physical exam was in July 1994. I am not currently under treatment for any illness or physical condition. In June of 1991, I had a kidney removed at the Mayo Clinic. This was necessitated as a result of a small low grade tumor on my kidney which had not spread. Due to the small size and low grade nature of the tumor, I have been assured by my physicians at the Mayo Clinic and in Erie that the surgery was completely curative. No radiation or chemotherapy was required. I have attached a letter from Dr. Peter Lund, my urologist, confirmatory of the same.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (a) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court

Sean J. McLaughlin

rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and, if so, the name of the judge, the court, and the dates of the period you were a clerk;
2. whether you practiced alone, and, if so, the addresses and dates;
3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Subsequent to graduation I became a law clerk for the Honorable William W. Knox of the United States District Court for the Western District of Pennsylvania, U.S. Courthouse, Pittsburgh, Pennsylvania. I served as law clerk to Judge Knox from July of 1980 through August of 1981. My duties included extensive legal research involving both criminal and civil matters, assisting in the drafting of legal opinions; preparation of case summaries for utilization by the Court at status and pretrial conferences and accompanying the Judge in the court room for all hearings and trials. During my tenure with Judge Knox I served as the court room law clerk during a three month drug trial, United States v. Ammar, 714 F.2d 238 (3d. Cir. 1983). I also served as law clerk to Judge Knox when he sat by special designation on the Third Circuit Court of Appeals.

Subsequent to Judge Knox's death in late August 1980, I served as temporary law clerk to the Honorable Gerald J. Weber of the United States District Court for the Western District of Pennsylvania, U.S. Courthouse, Pittsburgh, Pennsylvania. My duties were similar to those performed for Judge Knox.

In October of 1981 I joined the law firm of Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, Pennsylvania 16501, as an associate. Since 1987 I have been a partner in the firm. Throughout my tenure with the firm I have been exclusively a member of the litigation department. During the last four years I have served on the firm's Litigation Management Committee.

I have never been a sole practitioner.

- b.    1.    What has been the general character of you law practice, dividing it into periods with dates if its character has changed over the years?
2.    Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The focus of my practice has been civil litigation. I have had broad experience in many areas of litigation in state and federal trial and appellate courts. My litigation practice has included insurance defense work, third party tort actions, first party claims and insurance coverage disputes. I have also had significant experience in construction related litigation, U.C.C. and commercial litigation and medical malpractice. In addition, I have represented plaintiffs in personal injury actions throughout my tenure with the firm.

A significant portion of my practice has involved matters in Federal court. During the last seven years, I have become heavily involved in federal civil rights litigation under 42 U.S.C. Section 1983 and Title IX during the last six or seven years. I have represented a number of female students and acted as counsel in multiple civil rights actions involving school districts in federal court arising out of the sexual abuse and harassment of the students by teachers. These cases include Stoneking v. Bradford Area School District, 882 F.2d 720 (3rd Cir. 1989), Cert. Denied, 493 U.S. 1044, 110 S.Ct. 840, 107 L. Ed. 2d 835 (1990), Sowers v. Bradford Area School District, 694 F.Supp. 125 (W.D.Pa. 1988), Harbaugh v. Bradford Area School District, No. 86-133 (W.D. Pa.), Rovito v. Bradford Area School District, No. 87-63 (W.D. Pa.) and Yeropoli v. Wilmington Area School District, No. 91-741 (W.D. Pa.).

For several years I have also acted as special labor litigation counsel for school districts in the Erie, Pennsylvania area and have successfully prosecuted teacher dismissal actions before arbitrators of the American Arbitration Association. Within the last four



Sean J. McLaughlin

years I have also been involved in cases arising under Title VII as well as the Age Discrimination in Employment Act of 1967.

I have developed a specialty in both the defense and prosecution of personal injury actions as well as litigation arising under Federal constitutional and statutory law, including Title VII, 42 U.S.C. Sec. 1983, The Americans with Disabilities Act of 1990 and the Civil Rights Act of 1991.

Our firm represents a broad cross section of corporations, municipal entities, private individuals and insurance companies. I have been involved in litigation-related matters on behalf of all of the above groups.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Throughout my practice I have appeared in court frequently. I have tried many cases in state and federal courts. I have personally handled dozens of arbitration cases in the Courts of Common Pleas, as well as several uninsured/underinsured motorist cases pursuant to contractual arbitration clauses under insurance policies. I have also been selected on numerous occasions to serve as an arbitrator in uninsured/underinsured motorist cases as well as arbitration cases in the Court of Common Pleas. I have tried cases before hearing examiners of the National Labor Relations Board. I have been personally involved during my practice in over 700 litigation related cases which were resolved prior to trial either by way of settlement or pre-trial dismissal.

2. What percentage of these appearances was in:

- (a) federal courts - 30%
- (b) state courts of record - 50%
- (c) other courts - 20%

3. What percentage of your litigation was:

- (a) civil - 100% As a litigator my experience has been exclusively in the area of civil law. However, as a law clerk, I had significant exposure to criminal substantive and procedural law.

(b) criminal.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I have tried approximately 20 cases to verdict or judgment. I was sole counsel in approximately 75% of the cases, chief counsel in approximately 15% and associate counsel in approximately 10%.

5. What percentage of these trial was:

- (a) jury - 70%  
(b) non-jury - 30%

18. Litigation: Describe then ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;  
(b) the name of the court and the name of the judge or judges before whom the case was litigated; and  
(c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the parties.
- (1) Ace-Tex v. Sanitary Wiping, No. 88-1300A (W.D. N.Y.)

In Ace-Tex, I represented the Defendant, Sanitary Wiping Cloth, d/b/a Erie Cotton Products (Erie Cotton). Erie Cotton was a local wiping cloth distributor which was sued in the United States District Court for the Western District of New York. The Plaintiff sued my client under several theories, including tortious interference with contract, unfair competition and unjust enrichment arising out of the hiring by the Defendant of a salesman formerly employed by the Plaintiff. It was the Plaintiff's contention that there was a valid and enforceable restrictive covenant in an employment agreement precluding the salesman's employment with the Defendant. Monetary damages and equitable relief were sought.

The case is significant because, in finding for the Defendant, the Honorable Richard Arcara

Sean J. McLaughlin

produced an exhaustive opinion reviewing the current state of the law in New York relative to the enforceability of restrictive covenants in employment contracts in industries such as the wiping cloth industry. The case represents a clear and exhaustive analysis of this issue.

I was involved in pre-trial motion practice as well as the drafting of pre and post-trial briefs. I tried the case and made the closing argument to the court subsequent to the completion of the evidence. The case was tried in Buffalo, New York on the following dates: February 28, 1991, March 1, 1991, March 4-5, 1991, January 21, 1992, January 23, 1992 and May 8, 1992.

Associate counsel for the Defendant was Richard A. Lanzillo, Esq., 120 West Tenth Street, Erie, Pennsylvania 16501 (814) 459-2800. Counsel for the Plaintiff was James Gauthier, Esq., 1300 Liberty Building, Buffalo, New York 14202 (716) 849-8900. The presiding judge was the Honorable Richard Arcara, U.S. Courthouse, 68 Court Street, Buffalo, New York 14202 (716) 846-5626.

- (2) Yeropoli v. Wilmington Area School District, No. 91-741 (W.D. Pa.).

In Yeropoli I represented a former high school student who had been the victim of sexual abuse and harassment by a former teacher. I sued the school district under 42 U.S.C. Section 1983 and Title IX on the theory that the school district engaged in a long practice of deliberate indifference to instances of known or suspected sexual abuse of students.

I filed the complaint, conducted the majority of the depositions, drafted the pre-trial narrative and tried the case from July 6 through July 20, 1992 before the Honorable Judge Alan A. Bloch of the United States District Court for the Western District of Pennsylvania in Pittsburgh, Pennsylvania. A jury returned a verdict in favor of the Plaintiff in the amount of \$50,000.00.

The case was significant in that it represents the first case wherein a federal court recognized that Title IX independently could support a claim for damages based on sexual abuse or harassment in a public school setting. The court authored an Opinion permitting the case to proceed under a Title IX theory as well as under Section 1983.

Sean J. McLaughlin

Counsel for the Defendant was Andrew J. Leger, Esq., 3301 McCrady Road, Pittsburgh, Pennsylvania 15235 (412) 242-4400. Co-counsel for the Plaintiff was Richard A. Lanzillo, Esq., 120 West Tenth Street, Erie, Pennsylvania 16501 (814) 459-2800. The presiding judge was the Honorable Alan A. Bloch, U.S. Post Office and Courthouse, 7th and Grant Streets, Pittsburgh, Pennsylvania 15219 (412) 644-5962.

- (3) Stoneking v. Bradford Area School District, 882 F.2d 720 (3rd Cir. 1989), Cert. Denied, 493 U.S. 1044, 110 S. Ct. 840, 107 L. Ed. 2d 835 (1990).

In Stoneking, I represented the Plaintiff who had been sexually abused by a former band director in the Bradford School District. The Stoneking case was filed subsequent to the filing of Harbaugh v. Bradford Area School District, No. 86-133 (W.D. Pa.) and Rovito v. Bradford Area School District, No. 87-63 (W.D. Pa.). I also served as counsel for the plaintiffs of the Harbaugh and Rovito cases who were also victims of sexual abuse by the band director. The Honorable Glenn Mencer of the United States District Court for the Western District of Pennsylvania was the trial court judge in all the Bradford School cases.

Harbaugh and Rovito settled favorably during the pendency of summary judgment motions. Our office was retained by counsel for Stoneking to prosecute her action on her behalf.

The above cases were brought under 42 U.S.C. Section 1983 alleging a violation of the students' substantive due process right to be free from sexual abuse and intimidation in a public school setting. To my knowledge, the Bradford cases represent the first cases wherein Section 1983 was utilized as a vehicle to seek redress in federal court for the nature of the harm suffered by the plaintiffs.

I personally conducted the majority of the depositions in the Bradford cases, drafted the original complaints (i.e., Harbaugh and Rovito), appeared in federal court in connection with motions, and drafted or assisted in drafting various briefs in opposition to summary judgment motions as well as briefs in opposition to petitions for writs of certiorari to the United States Supreme Court.

Stoneking involved the successful defense of multiple appeals to the United States Court of Appeals for the Third Circuit and briefs in opposition to two petitions for writs of certiorari to the United States Supreme Court. These cases are significant because the district and appellate courts recognized for the first time that public school students have a constitutionally protected liberty interest to be free from sexual abuse and harassment at school and that a district and its administrative personnel may be held liable for deliberate indifference to abuse occurring at school. In addition, Stoneking provides an exhaustive analysis of the law concerning the issue of qualified immunity under 42 U.S.C. Section 1983.

Co-counsel for Plaintiff were Deborah W. Babcox, Esq., McKean County Courthouse, Smethport, Pennsylvania 16749 (814) 887-5571 and Richard A. Lanzillo, Esq., 120 West Tenth Street, Erie, Pennsylvania 16501 (814) 459-2800. Counsel for Defendant were James McDonald, Esq., 456 West Sixth Street, Erie, Pennsylvania 16507 (814) 456-5318 and Kenneth D. Chestek, Esq., 319 West Tenth Street, Erie, Pennsylvania 16502 (814) 454-5868. The presiding judge was the Honorable Glenn Mencer, 30 West Willow Street, Smethport, Pennsylvania 16749 (814) 887-2408.

- (4) Sowers v. Bradford Area School District, 694 F. Supp. 125 (W.D. Pa. 1988).

In Sowers I filed an action under Section 1983 on behalf of the plaintiff who had been abused by the band director in 1979. I personally conducted the majority of the depositions in the case, drafted the complaint, and drafted or assisted in drafting various briefs.

Sowers is significant because the court not only reiterated the plaintiff's substantive due process right to be free from sexual abuse in school but also held that, under appropriate circumstances, a constitutional duty was owed to school children where the abuse occurred off school premises as well. The case was also significant because of the court's application of the discovery rule which permitted the prosecution of the plaintiff's claims several years after the abuse.



Sowers involved the successful defense of a motion to dismiss at the trial court level as well as the successful opposition of two appeals to the United States Court of Appeals for the Third Circuit. It also entailed two briefs in opposition to petitions for writs of certiorari. The case settled favorably to the plaintiff prior to trial.

Co-counsel in Sowers was Richard Lanzillo, Esq., 120 West Tenth Street, Erie, Pennsylvania 16501 (814) 459-2800. Counsel for Defendant were Kenneth D. Chestek, Esq., 319 West Tenth Street, Erie, Pennsylvania 16502 (814) 454-5868 and James Harvey, Esq., 501 Grant Building, Pittsburgh, Pennsylvania 15219 (412) 391-1114. The presiding judge was the Honorable Glenn Mencer, 30 West Willow Street, Smethport, Pennsylvania 16749 (814) 887-2408.

- (5) Colosimo v. Pennsylvania Electric Company, No. 263 June Term 1978, McKean County, Pennsylvania.

In Colosimo I was co-counsel for the Defendant, Pennsylvania Electric Company, which had been sued by a restaurant owner for two million dollars in property damage and lost profits as the result of a fire allegedly caused by the Defendant's negligence. At trial the Defendant successfully argued that the interruption of the electrical service to the restaurant was not the proximate cause of the fire loss. A significant portion of the case involved expert testimony concerning issues relative to the cause and origin of the fire. I argued motions in limine to the Court and tried the case between March 23, 1987 and March 29, 1987 before the Honorable John M. Cleland in the Court of Common Pleas of McKean County, Pennsylvania. At trial I conducted the examination of approximately fifty percent of all witnesses. A jury verdict was rendered in favor of the Defendant.

The case was significant for its factual and technical complexity and the size of the damage claim.

Co-counsel was James T. Marnen, Esq., 120 West Street, Erie, Pennsylvania 16501 (814) 459-2800. Counsel for the Plaintiff was Paul H. Titus, Esq., Four Gateway Center, 20th Floor, Pittsburgh, Pennsylvania 15222 (412) 642-2000. The presiding judge was the Honorable John M. Cleland, McKean

Sean J. McLaughlin

County Courthouse, Smethport, Pennsylvania 16749  
(814) 887-5571.

- (6) Eastman Kodak Company and George Foster, an individual v. The City of Erie, a Municipality and The Xerox Corporation, Erie County Court of Common Pleas No. 6004 - 1994 (Equity).

I am presently representing Xerox Corporation in an equity action instituted by Eastman Kodak Company to set aside the letting of a contract to Xerox by the City of Erie. I have conducted all pre-trial depositions and am presently involved in trying the case before the Honorable Jess Jiuliente of the Court of Common Pleas of Erie County. The trial commenced on March 17, 1994. The Trial was thereafter adjourned and was completed on May 6, 1994.

The case is significant because it presents the Court with an opportunity to clarify under Pennsylvania Law the legitimate scope and discretion of a municipal entity in the awarding of public contracts.

Counsel for the Plaintiff is William Patrick Delaney, Esq. 100 State Street, Suite 700, Erie, Pennsylvania 16507 (814) 870-7658. Counsel for the City of Erie is Gregory A. Karle, Esq., Sixth and State Streets, Erie, Pennsylvania 16507 (814) 453-4651. The presiding judge was the Honorable Jess Jiuliente, Erie County Courthouse, Erie, Pennsylvania 16501 (814) 451-6000.

- (7) North and South Shenango Joint Municipal Authority v. Bert Eaton, et al., No. A.D. 1981 - 765 (Crawford County)

In the above case, I was co-counsel for the project engineers, Northwest Engineering, Inc., who had been responsible for the design of a massive eighty mile sewer system in the Pymatuning area. The Plaintiff sued the target Defendant, Northwest Engineering, Inc. as well as approximately thirty other contractors and subcontractors in a multi-count complaint alleging negligence, breach of contract and fraud.

I was extensively involved in this litigation over a period of several years from the early to mid 1980's. My involvement entailed frequent motion practice in the Crawford County Court of Common Pleas before the Honorable P. Richard Thomas, participation in dozens of pre-trial depositions

Sean J. McLaughlin

and an argument at the Superior Court wherein an interlocutory appeal of the Plaintiff was quashed. I began to try the case before Judge Thomas in December of 1986 until the litigation settled. The Plaintiff had sought damages in excess of \$13,000,000.00 and to my knowledge this case represents the largest and most complex construction related litigation ever filed in Crawford County.

Counsel for the Plaintiff was Fred E. Baxter, Jr., Esq., 3445 Babcock Boulevard, Pittsburgh, Pennsylvania 15237 (412) 369-0911. Counsel for Defendant, Ontario Pipeline, was Lynnette Norton, Esq., 46th Floor, USX Tower, 600 Grant Street, Pittsburgh, Pennsylvania 15219 (412) 288-4003 and William Schaaf, Esq., 300 State Street, Suite 300, Erie, Pennsylvania 16507 (814) 456-5301. The presiding judge was the Honorable P. Richard Thomas, Crawford County Courthouse, 903 Diamond Park, Meadville, Pennsylvania 16335 (814) 336-1151.

- (8) Rudolph v. Slomski v. Piroli, Erie County Court of Common Pleas No. 473-A-1987.

I represented an Additional Defendant, Louis Piroli, who came to the Plaintiff's aid after she had been involved in an automobile accident. Mr. Piroli allegedly injured her while attempting to extricate a passenger from her vehicle.

I conducted all pre-trial discovery, filed the Pre-Trial Narrative and tried the case as sole counsel before the Honorable John Falcone in the Court of Common Pleas of Erie County on October 16-25, 1989. A jury returned a defense verdict in favor of Mr. Piroli.

This case was significant because it involved several issues under Pennsylvania tort law, including the sudden emergency doctrine, the good samaritan rule and the limits of proximate causation.

Counsel for Co-Defendant was Ronald Slater, Esq., 150 East Eighth Street, Erie, Pennsylvania 16501 (824) 456-4000. Counsel for Plaintiff was Ralph Riehl, III, Esq., 2580 West Eighth Street, Erie, Pennsylvania 16505 (814) 838-7920. The presiding judge was the Honorable John Falcone, 2222 W. Grandview Boulevard, Erie, Pennsylvania 16506 (814) 833-2222.

Sean J. McLaughlin

- (9) David Tague v. Millcreek Township School District, AAA 89-1, Erie County Court of Common Pleas No. 748-A-1990.

In this case I acted as special labor counsel for the Millcreek School District. I prosecuted an action for dismissal for immorality against a sixth grade teacher before an arbitrator of the American Arbitration Association. The case was tried on November 14, 16 and 17, 1989 in Erie County. I conducted the entire pre-trial investigation and tried the case as sole counsel for the District.

The arbitrator rendered an exhaustive opinion upholding the dismissal. On appeal, I argued the case before the Honorable Michael Joyce of the Court of Common Pleas of Erie County who entered an Order on June 21, 1990 dismissing Tague's appeal.

This case is significant because the District succeeded in eliminating a teacher whom the arbitrator found to represent a threat to the health and safety of the children. The arbitrator's decision reviews in great detail the law relative to dismissal for immorality under the Pennsylvania School Code.

Counsel for Tague/the Union was John Barber, Esq., 155 West Eighth Street, Suite 220, Erie, Pennsylvania 16501 (814) 454-1010. The arbitrator was Elliot Newman, 79 North Jackson Avenue, Pittsburgh, Pennsylvania 15202 (412) 761-3707. The presiding judge was the Honorable Michael Joyce, Erie County Courthouse, Erie, Pennsylvania 16501 (814) 451-6000.

- (10) Bruno v. Black, Erie County Court of Common Pleas No. 4789-A-1987.

In 1989 I represented the Defendant, landlord, who had been sued by her tenant for injuries allegedly sustained in a fall from her porch. The case was tried on June 8 and 9, 1989. At the conclusion of the case, the Honorable William Pfadt of the Court of Common Pleas of Erie County directed a verdict in favor of the Defendant and dismissed the jury.

The case was not a garden variety slip-and-fall as it involved various issues, including the duty of a landlord out of possession and the applicability of various local building ordinances.



Sean J. McLaughlin

Counsel for the Plaintiff was George Schroeck, Esq., 338 West Sixth Street, Erie, Pennsylvania 16507 (814) 459-8655. The presiding judge was the Honorable William Pfadt, 539 Mont Marc Boulevard, Erie, Pennsylvania 16504 (814) 825-3899.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Within the last several years, I have acted as lead counsel in cases arising under Title VII as well as the Age Discrimination and Employment Act. I have also been involved, both as lead counsel and co-counsel, in several cases under the Uniform Commercial Code as well as medical malpractice actions. I have participated as trial counsel in both UCC litigation and medical malpractice litigation which resolved both prior to and during trial. I have lectured extensively on Title I of the Americans with Disabilities Act.

For several years I have also acted as special labor litigation counsel for school districts in the Erie, Pennsylvania area and have successfully prosecuted teacher dismissal actions before arbitrators of the American Arbitration Association. Within the last four years I have also been involved in cases arising under Title VII as well as the Age Discrimination in Employment Act of 1967.

I am a member of Practicum Program of the Erie County Bar Association and have lectured on Federal practice and procedure. I have also served on the Civil Rules Committee of the Erie County Bar Association and presently serve on the Bar Association's Executive Committee.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

a. Pension and Profit Sharing Plan - \$115,000.00



Sean J. McLaughlin

- b. Law Building, Inc. - \$62,300.00 - If I am confirmed, the partnership will purchase my interest in Law Building, Inc. subsequent to my confirmation.
- c. Interest in Pro-Corp - \$6,381.00
- d. Greater Bay Properties - I am not receiving any rental income or other income from the four properties. At some indeterminate future date, the properties may be sold and I would have a 1/4 interest in any equity in the properties.

In the event of my confirmation, the firm will distribute to me on a pro-rata basis my year-end distribution as well as purchase my interest in the professional corporation.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

With respect to any potential conflict of interest which may arise, I will follow and be guided by the Code of Judicial Conduct. I will recuse myself from hearing any cases involving lawyers from my previous law firm for the requisite period of time in the event that I am confirmed. I am presently unaware of any potential conflicts-of-interest related to either litigation or financial arrangements which would likely arise during my initial service. There are presently pending, however, two cases in the Western District in which I am involved. If these cases have not been resolved, either by way of verdict or pre-trial dismissal prior to my confirmation, I will, of course, have no involvement with them if elevated to the bench.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents royalties, patents, honoraria, and

Sean J. McLaughlin

other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be submitted here.)

Financial Disclosure Report Form AO-10 is attached hereto as Schedule A.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidates, dates of the campaign, your title and responsibilities.

No.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since 1981, I have participated in the Erie County Bar Association's legal aid program. I have represented approximately fifteen clients in the pro-bono program and have been recognized by the program for my service. I have also volunteered my time to lecture to various citizens' groups on subjects of topical interest such as the Motor Vehicle Financial Responsibility Law. I have also volunteered my legal services to the Erie Housing Authority in connection with its application for a HUD grant. I have spent approximately thirty hours this year involved in pro-bono work for the Housing Authority and approximately twenty hours over the past year representing clients in the Erie County Bar Association's Legal Aid Program. I presently serve on the Executive Committee for the Erie County Bar Association which meets at least once a month and, occasionally, twice a month.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates--through either formal

Sean J. McLaughlin

membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A judicial selection committee recommended my name to Senator Wofford as a candidate for nomination to the Federal Court. I submitted a detailed Questionnaire to the Committee and was interviewed by the Committee in April of this year. Thereafter, I was interviewed telephonically by Senator Wofford and subsequently by a staff member in Senator Wofford's office telephonically for approximately one hour. In April of 1994, I was informed by Senator Wofford that he was referring my name to President Clinton for potential nomination.

Thereafter, I was interviewed by an Assistant Deputy Attorney General at the Department of Justice for approximately two hours. Within several weeks I returned to the Department of Justice and was interviewed for approximately two or three hours by the Assistant Attorney General and several members of her staff. A few weeks later I was notified by the Department of Justice that my name had been forwarded to the American Bar Association as well as the Federal Bureau of Investigation.

I completed an extensive questionnaire for the Federal Bureau of Investigation as well as for the American Bar Association. Prior to the commencement of the field investigation by the Federal Bureau of Investigation, I was interviewed at the local Federal Bureau of Investigation Office in Erie, Pennsylvania. The representative of the American Bar Association interviewed me at my office subsequent to the completion of his investigation. On August 12, 1994 I was informed by the White House that the President had submitted by name for nomination for a judgeship in the United States District Court for the Western District of Pennsylvania.

23 045 383

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives or other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I do not believe that it is appropriate for a judge to act as a legislator. The imposition of broad affirmative duties upon governments and society, as a general rule, is a function vested with elected representatives. I believe that a judge should rule on a case based solely upon the unique facts of that particular case and the applicable law. Individual cases should not be used as a vehicle for imposing duties or obligations more expansive than is required under the particular facts of the case. In addition,

Sean J. McLaughlin

the doctrines of standing and ripeness are, in my opinion, legitimate jurisdictional requirements with a constitutional basis.

The term "judicial activism" as defined in the Questionnaire suggests a judiciary that is bent on advancing its own private, social, political or moral agenda quite independent of statutory, constitutional or precedential support. To that extent, I am opposed to "judicial activism." In short, I feel that the judiciary functions best when it resists the temptation to act as a super-legislature. Further, I believe that the doctrine of stare decisis is fundamental to our jurisprudence. However, I do believe that statutes should be construed according to the reasonably apparent intent of the legislative body and that the Constitution is not a rigid and fossilized document incapable of accommodating changing circumstances.



## 2. Published Writings.

OVERVIEW OF TITLE I OF THE AMERICANS WITH DISABILITIES ACT

Sean J. McLaughlin  
 KNOX McLAUGHLIN GORNALL & SENNETT, P.C.  
 120 West Tenth Street  
 Erie, PA 16501

The Americans with Disabilities Act (ADA), has been described with good reason as one of the most significant pieces of employment legislation in the last several decades. The purpose of the Act is to provide a statutory vehicle for some 43,000,000 Americans to redress discrimination, particularly in the employment context. The ADA became effective on July 26, 1992 and applies to all employers engaged in interstate commerce with 25 or more employees from that date through July 26, 1994. Thereafter, it will apply to all employers with 15 or more employees.

The ADA impacts on virtually every aspect of the pre and post-employment relationship with disabled applicants and disabled employees. Both compensatory and punitive damages are recoverable against an employer for intentional discrimination under the Act. Thus, there will be a significant economic incentive for both the claimant and claimant's counsel to pursue ADA claims.

The class afforded protection under the Act are "qualified individuals with a disability." Under the Act that means "an individual with a disability, who, with or without reasonable accommodations, can perform the essential functions of the employment position that such individual holds or desires." It is important to stress that an employer is not required to hire or otherwise give preferential treatment to a disabled applicant or retain a disabled employee simply by virtue of the disability. Basic qualifications for the position including education, experience, training, etc. need not be waived. Moreover, the employer retains the right to evaluate the relative qualifications of applicants and to select the best qualified even though there may be a "qualified" individual with a disability in the pool of rejected applicants. The obligation of the employer is to evaluate the qualifications fairly on the basis of the qualifications of the disabled person after reasonable accommodation.

The term "disability" is given a rather expansive definition under the Act and its implementing regulations. Specifically, a disability means "a physical or mental impairment which substantially limits one or more of the major life activities of the individual; a record of such an impairment, or being regarded as having such an impairment." Physical or mental impairments can include a variety of conditions including orthopedic, visual, speech and hearing impairments, HIV infection, AIDS, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation and mental or emotional illness. The list is by no means exhaustive.

The regulations make clear, however, that certain types of physical or mental conditions do not qualify as impairments under the Act. For example, the Act does not apply to pregnancy. Personality traits such as a quick temper

are not considered impairments. Sexual disorders including homosexuality and bisexuality are excluded. Kleptomania and compulsive gambling are not afforded protection. Active drug users, those pre-disposed to illness or disease and old age, in and of itself, will not trigger the Act's protection. However, many physical impairments commonly associated with old age such as osteoporosis, poor eyesight, etc. would represent impairments within the meaning of the Act.

"Major life activities" under the Act are essentially those basic activities of daily living that the average person can perform with little or no difficulty. They would include but not necessarily be limited to caring for oneself, walking, seeing, hearing, speaking, breathing and working. Minor or insignificant limitations on the enjoyment of "major life activities" do not constitute disabilities under the Act. The limitation must be "substantial." In attempting to determine whether a particular impairment does, indeed, "substantially limit" major life activities the following factors may provide some guidance: (a) the nature and severity of the impairment; (b) the duration of the impairment; (c) the permanency or long term impact of the impairment.

The regulations make clear that determinations of this nature must, of necessity, be handled on a case by case basis. A few examples may be helpful. An individual with a broken leg although suffering from an impairment is not "substantially limited" because the expected duration of the impairment is rather short. A speed walker who due to an injury can only walk at a moderate speed although subjectively impaired has not suffered a substantial impairment of a major life activity (i.e. walking). The focus is on the "average man" and not on unique or exceptional abilities of the specific individual prior to sustaining or incurring the impairment.

If an individual is substantially impaired with respect to his or her ability to perform a major activity of daily life it is unnecessary to consider whether the individual is likewise impaired with respect to his/her ability to perform the major life activity of working. If, on the other hand, there is no other substantial impairment of a major life activity the impact on the individual's ability to work should be considered. Relevant factors in determining whether there has been a substantial impairment of an individual's ability to work include the geographic area to which the individual has access as well as those jobs within the geographic area which are similar in skill and requirements to the one that the disabled individual can no longer perform.

Generally speaking, an individual's inability to perform a specialized job or one requiring unique skills or talent will not support a claim of substantial impairment with respect to work. For instance, a professional baseball pitcher who injures his elbow and can no longer pitch professionally is not considered "substantially impaired." The commercial airline pilot who is relegated to flying cargo as opposed to passenger planes because of slightly deficient eyesight will similarly not be considered "substantially impaired." Most typically, an inability to perform a broad class of jobs is necessary to support a finding of substantial impairment. A man who strains his back is substantially

impaired because he is precluded from engaging in any type of employment that would require heavy or manual labor or lifting.

A disability may also be based upon a "record of such an impairment." The purpose of this provision is to prevent discrimination based upon a paper record of a physical or mental impairment. Individuals who would be protected under this provision would include, for instance, former cancer patients and even individuals who had been misclassified as disabled. In order for an individual to qualify as "disabled" under this provision, however, it is necessary that the prospective employer in fact relied upon a medical, educational or work record containing such information.

Finally, an individual may qualify as disabled within the meaning of the Act simply by "being regarded as having an impairment." Typically, this provision will arise in one of three ways: (1) an individual has an impairment that is not substantially limiting but is perceived as having one; (2) the individual has an impairment that is perceived as substantially limiting by others (i.e. a severe facial scar, involuntary twitch); or (3) the individual has no impairment at all but is regarded as having one (e.g., incorrectly believed to have AIDS).

Once it is determined that an individual is, in fact, disabled within the meaning of the Act, what are the obligations of the employer? In other words, what does the Act prohibit and what does the Act require? The Act prohibits discrimination against qualified individuals with a disability in virtually every aspect of the pre and post-employment relationship. This would include but not necessarily be limited to job application procedures, hiring, advancement, discharge of employees, employee compensation, job training, leaves of absence, fringe benefits, and activities sponsored by an employer or social and recreational programs. "Discrimination" can take many forms. It includes segregating or classifying job applicants or employees in ways that adversely affect their opportunity or status because of their disability; participating in contractual or other arrangements or relationships that have the effect of subjecting an employer's applicants or employees with disabilities to discrimination; utilizing criteria, standards or methods of administration that tend to discriminate on the basis of disability; excluding or denying equal jobs or benefits to qualified individuals because of the known disability of an individual with whom they have a relationship or association; failure to make reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability; utilizing qualification standards, employment tests or other selection criteria that tend to screen out individuals with a disability or a class of such individuals; and failing to administer employment tests in a manner that ensures that the tests adequately reflect the skills and aptitude of the disabled applicant. It is likely, however, that claims based upon the failure of an employer to reasonably accommodate a qualified individual with a disability will generate the majority of claims under the Act.

An employer will be required to provide accommodations to enable disabled persons to perform only essential job functions. No accommodation is

necessary or required with respect to marginal job duties. Nor may an employer refuse to hire or promote a disabled individual because of his/her inability to perform marginal job functions. Accommodations may include the modification or adjustments to the job application process to enable persons to be considered for the position; modifications or adjustments to the work environment or the manner in which the position is customarily performed; and modifications or adjustments that enable the disabled employee to enjoy access to the same benefits and privileges of employment as those enjoyed by other employees without disabilities. The accommodations may require structural changes to the facility such as wheelchair access to work areas, break areas or restrooms. Accommodations that do not involve structural changes may include providing additional unpaid leave for necessary medical treatment, making employer provided transportation accessible, restructuring a job by re-allocating or redistributing non-essential or marginal job functions, providing flexible working schedules and allowing guide dogs at work.

The scope of the employer's potential duty with respect to reasonable accommodation is evident in the regulations which suggest that an employer may even be required to provide personal assistants for the disabled. Examples cited include hiring a page turner for an employee who has no hands or a travel attendant to assist a blind employee on occasional trips outside the office. Personal assistants, however, must not be required to perform essential job functions for the employee.

Re-assignment to vacant job positions that the disabled employee is capable of performing represents another example of an accommodation. "Bumping" of other employees, however, is neither required nor permitted. The implementing regulations contemplate the re-assignment by employers of individuals to equivalent positions if a vacancy occurs within a reasonable period of time. The employer is free to re-assign a disabled employee to a lower graded position provided that there are no accommodations that would permit the employee to remain in the current position and there are no vacant equivalent positions for which the employee would be qualified either with or without reasonable accommodation.

Employers are not required to provide employees with adjustments or modifications that are primarily for their personal benefit on and off the job. Examples would include prosthetic limbs, wheelchairs, eyeglasses, etc. Nor is it necessary that the accommodation be the most expensive or elaborate. All that is required is that it reasonably meet the job related needs of the disabled individual. According to the regulations, preferences of the individual should be considered by the employer.

When an accommodation issue arises the regulations suggest the following approach: (1) analyze the job involved and determine its purpose and essential functions; (2) consult with the individual with the disability to determine the nature of the limitations imposed by the disability and the ways in which they might be overcome with reasonable accommodation; (3) identify potential accommodations and assess their effectiveness in permitting the disabled employee



to perform the essential functions of the job; and (4) give consideration to the preferences of the individual.

Reasonable accommodation, however, is not required when to do so would work "an undue hardship" upon the employer. With respect to financial hardship the focus is on the overall financial resources of the entity and the facility involved and the effect on expenses and resources of the proposed accommodation. An accommodation may represent an undue hardship regardless of expense if it fundamentally disrupts the nature of the employer's business. Examples cited in the regulations include a poorly sighted employee in a nightclub. In that case the employer would not be required to turn up the lighting since to do so would alter the atmosphere of the nightclub.

In some situations a person may pose a "direct threat" to himself or others which cannot be eliminated through a reasonable accommodation. In those situations an employer is not required to hire or retain the applicant or employee. The regulations make clear that these situations must be handled on a case by case basis and decisions cannot be based on conjecture or speculation. Rather, a finding of "direct threat" must be based on the best available objective/medical data. In evaluating whether an individual poses a direct threat the regulations suggest, the following factors should be considered: The duration of the risk; the nature and severity of the potential harm; the likelihood that the potential harm will occur; and the imminence of the potential harm. The regulations cite the case of a narcoleptic who applies for a job as a carpenter. Since the man could lapse into unconsciousness while using a power saw or other dangerous piece of machinery and as no reasonable accommodation could reduce that risk, the applicant could be rejected on the basis of his medical condition.

The ADA prohibits an employer at the pre-employment offer stage from asking an applicant about a disability or worker's compensation history. Pre-employment inquiries should relate to the applicant's ability to perform a job function rather than his/her specific disabilities. For instance, an employer who runs a moving company may inform a one-arm applicant as to the lifting requirements of the job and inquire of the individual how he would propose to do it. An employer may not provide a list of disabilities and require potential applicants to check any disabilities which they have.

After an offer of employment has been made but before the employee has commenced work employers may require as a condition of employment that all applicants take medical examinations. This is permissible provided that all applicants are required to have a medical exam regardless of disability. If the examinations are not intended to screen out impaired applicants they do not have to be consistent with business necessity. If they are intended to screen out applicants with impairments the exams must be job-related and consistent with business necessity. Information gathered in the course of the medical examinations must be collected and maintained in separate files. These records must be treated in a confidential manner and relevant information may only be released to supervisors and managers regarding necessary restrictions on the work or duties of an employee and necessary accommodations;



to first aid and safety personnel where emergency treatment may be required: and to government officials investigating compliance with the Act.

All documents utilized by the employer in connection with the job application process should be analyzed for compliance with the Act. In-house training of managers involved in hiring and human resource functions as to the Act's requirements should be conducted. Not only will it serve to minimize exposure under the Act but efforts at compliance are relevant on the issue of the employer's "good faith." Remember, only intentional discrimination or a "bad faith" failure to reasonably accommodate will support an award for compensatory or punitive damages.

DATED: July 1992

24PC01272

ST VINCENT UROLOGY ASSOCIATES, INC.  
311 WEST 24TH STREET  
SUITE 202  
ERIE, PENNSYLVANIA 16502  
TELEPHONE (814) 432-4214

WILLIAM G. ATKINS, M.D.  
DAVID A. COLABON, M.D.

PETER S. LUND, M.D.  
ZDZISLAW J. CHORAZY, M.D.

Document ID: Mclaugh-S.doc

January 6, 1993

To Whom It May Concern:

Sean McLaughlin has been a patient of mine since 1990. In the process of his evaluation, he was found to have a mass in the left kidney and he underwent evaluation and work-up in Erie, PA. He was subsequently referred to the Mayo Clinic in June of 1991, at which time he underwent a radical nephrectomy for this mass. The mass was then evaluated and reviewed and found to be a 1.5 cm size, Grade I renal cell carcinoma. These masses are universally cured by nephrectomy, the surgical procedure in which Mr. McLaughlin underwent, and his subsequent follow-up has shown no evidence of any recurrences. It is my opinion that this patient is cured of his renal cell carcinoma and the likelihood of him developing recurrences is no greater than the general population.

In summary, I see his procedure which was done in June of 1991 as being curative, and no further intervention or treatment will be necessary. Thank you very much.

Cordell

Peter Lund, M.D.

PL:mg

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

Person Reporting (Last name, first, middle initial)	2. Court or Organization	3. Date of Report
McLaughlin, Sean J.	U.S. District Court for the Western District of Pennsylvania	8/15/94
Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type)	6. Reporting Period
Nominee for Article III judgeship	<input checked="" type="checkbox"/> Nomination, Date <u>8/12/94</u> <input checked="" type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	1/1/93 - 7/31/94
Chambers or Office Address	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____	
120 West Tenth Street Erie, PA 16501	Reviewing Officer Signature _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts,  
checking the NONE box for each section where you have no reportable information. Sign on last page.

## POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐ NONE (No reportable positions)

Partner (Shareholder)	Knox McLaughlin Gornall & Sennett, P.C.
Partner	Greater Bay Properties (1/4 interest)

## AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒ NONE (No reportable agreements)

## II. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐ NONE (No reportable non-investment income)

1/1/93 - 7/31/94	Knox McLaughlin Gornall & Sennett, P.C. (compensation for legal services)	\$219,912.70 (gross) \$144,230.22 (net)
1/1/93 - 7/31/94	The Prudential, Prozan and LaJohn Realtors (S) (real estate commissions)	\$26,925.76 (gross)
		\$
		\$

Schedule A

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
McLaughlin, Sean J.

Date of Report  
8/15/94

**INVESTMENTS and TRUSTS** – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (Including trust assets)	B. Income during reporting period	C. Gross Value at end of reporting period		D. Transactions during reporting period					
Date, where applicable, owner of asset by using the parenthetical for joint ownership of report- ing individuals and spouse, (S), for joint ownership by spouse, (PC), ownership by dependent child.  Place "(X)" after each asset except from prior disclosure.	(1)	(2)	(1)	(2)	(1)	If not exempt from disclosure			
	Asset Code* (A-K)	Type (e.g., div., rent or loan)	Value, Code* (J-P)	Value Method, Code* (Q-W)	Type (e.g., buy, sell, margin, redemption)	(2) Date: Month Day	(3) Value, Code* (J-P)	(4) Sell, Code* (A-K)	(5) Identity of buyer/seller (if private transaction)
]	NONE (No reportable income, assets, or transactions)								
Constellation Fund	A	DIV,CG	J	T	BUY	4/22/93	J		
Global Health Care Fund	A	DIV,CG	J	T					
vestment G of America	A	DIV,CG	J	T	BUY	2/4/93	J		
omson Growth Fund	A	DIV,CG	J	T					
Mun. Holliday PA 10-15-0	A	INT	J	T					
9-1-03									
Mun. Penn Convention Ctr	A	INT	J	T					
U.S. Treasury 2-15-04	A	INT	J	T					
U.S. Treasury 2-15-07	A	INT	J	T	BUY	5/1/94	J		
U.S. Treasury 11-15-02	A	INT	J	T					
U.S. Treasury 11-15-03	A	INT	J	T	BUY	5/1/94	J		
U.S. Treasury 11-15-05	A	INT	J	T					
U.S. Treasury 11-15-03	A	INT	J	T					
4SCO (Common)	A	DIV	J	T	BUY	5/7/93	J		
rysler (Common)	A	DIV	J	T	BUY	5/1/94	J		
eneral Electric (Common)	A	DIV	J	T	BUY	5/1/94	J		
ov.'t Sec. Eq. Trust Ser.1	A	DIV	J	T					
ntegra (Common)	A	DIV	J	T	BUY	5/7/93	J		
BM (Common)	A	DIV	J	T	BUY	5/1/94	J		
ERCK (Common)	A	DIV	J	T	BUY	5/7/93	J		
estles (Common)	A	DIV	J	T					
Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000 See Col. B1 & B4 E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=More than \$1,000,000 Value Codes: J=\$15,000 or less K=\$250,001 to \$500,000 L=\$500,001 to \$1,000,000 M=\$1,000,001 to \$250,000 See Col. C1 & D3 N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=More than \$1,000,000 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market See Col. C2 U=Book Value V=Other W=Estimated									

Name of Person Reporting

Date of Report

McLaughlin, Sean J.

8/15/94

INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Date, where applicable, owner of asset by using the parenthetical for joint ownership of report- ing individual and spouse, "(3)" for estate ownership by spouse, "(DC)" ownership by dependent child.  Place "(X)" after each asset except from prior disclosure.	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1) Ast. Code: (A-E)	(2) Type (e.g., div., rent or int.)	(1) Value, Code: (J-P)	(2) Value Method Code: (Q-W)	(1) Type (e.g., buy, sell, transfer, redemp- tion)	(2) Date: Month Day	(3) Value, Code: (J-P)	(4) Gain, Code: (A-E)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)									
el (Common)	A	DIV	J	T	BUY	6/1/94	J		
dential Pacific Growth F.	A	DIV,CG	J	T					
ctrum Control (Common)	A	DIV	J	T	BUY	6/7/93	J		
dential Capital Returns F.	A	DIV	J	T					
European Growth Fund	A	DIV,CG	J	T					
enix Growth Fund	A	DIV,CG	J	T					
ig Appreciation Fund	A	DIV,CG	J	T					
U.S. Treasury 8-15-04	A	INT	J	T					
1, Erie, PA 25%	H	RENT	J	W					
2, Erie, PA 25%	H	RENT	J	W					
3, Erie, PA 25%	B	RENT	J	W					
4, Erie, PA 25%	C	RENT	K	W					
(partnership 1/25 share) Building Company	A		L	Q, U	(Unrealized Capital Gains)				
Knox McLaughlin Gornall Sennett, P.C. 1/25 share	A	INT	J	W					
lmart					BUY	5/7/93	J	A	
lmart					SELL	6/1/94	J	A	
psico					SELL	5/7/93	J	A	
tegra					SELL	6/1/94	J	A	

Income/Gain Codes: A=\$1,000 or less  
(See Col. B1 & D4) B=\$15,000 or less  
Value Codes: F=\$15,000 or less  
(See Col. C1 & D3) W=\$250,001 to \$500,000  
Value Method Codes: Q=Appraisal  
(See Col. C2) U=Book Value

B=\$1,001 to \$2,500  
P=\$30,001 to \$100,000  
R=\$15,001 to \$50,000  
O=\$500,001 to \$1,000,000  
R=Cost (real estate only)  
V=Other

C=\$2,501 to 5,000  
C=\$100,001 to \$1,000,000  
L=\$35,001 to \$100,000  
P=More than \$1,000,000  
S=Assessment  
W=Estimated

D=\$5,001 to \$15,000  
H=More than \$1,000,000  
N=\$100,001 to \$250,000  
X=Cash/Market



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting McLaughlin, Sean J.	Date of Report 8/15/94
---	---------------------------

**REIMBURSEMENTS and GIFTS** – transportation, lodging, food, entertainment.  
(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

☐ NONE (No such reportable reimbursements or gifts)


**OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

☐ NONE (No such reportable gifts)

		\$
		\$
		\$
		\$

**I. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

☐ NONE (No reportable liabilities)

Mellon Bank (J)	Line of Credit	K
Mellon Bank	Mortgage on Law Building (1/25 share)	K
Prudential Securities	Margin	K

\* VALUE CODES: J = \$15,000 or less    I = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 K = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = more than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting McLaughlin, Sean J.	Date of Report 8/15/94
---	---------------------------

## ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference Regulations.

Signature

*Sean J. McLaughlin*

Date 8/15/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILLFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

ASSETS			LIABILITIES		
Cash on hand and in banks	2 000	00	Notes payable to banks - secured	48 000	00
U.S. Government securities - add schedule			Notes payable to banks - unsecured		
Listed securities - add schedule	53 844	00	Notes payable to relatives		
Unlisted securities - add schedule			Notes payable to others		
Accounts and notes receivable:			Amounts and bills due		
Due from relatives and friends			Unpaid Income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable - add schedule		
Real estate owned - add schedule	294 000	00	Chattel mortgages and other liens payable	224 025	00
Real estate mortgages receivable			Other debts - itemize:		
Autos and other personal property	66 000	00	Mastercard	7 000	00
Cash value - life insurance	10 000	00	Cars (?)	25 000	00
Other assets - itemize:			Borrowed against stock	29 000	00
Pension	112 000	00	Total liabilities	333 025	00
IRA	1 200	00	Net Worth	274 200	00
Interest in Law Building	62 200	00	Total Liabilities and net worth	607 225	00
Pro Corp.	6 381	00			
Total Assets	607 225	00			
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, co-maker or guarantor	no		Are any assets pledged? (Add Schedule	no	
On leases or contracts	no		Are you defendant in any suits or legal actions?	no	
Legal claims	no		Have you ever taken bankruptcy?	no	
Provision for Federal Income Tax	no				
Other special debt	no				

Schedule A  
Listed Securities

QTY	SYMB/CUSIP	DESCRIPTION	PRICE	MARKT AVG PR	VALUE
612	CSTCX	ADM EQ FDS CONSTL PD	18.530		11,340
429	GCHCX	GT GLOBAL HLT CR FDA	19.870	N/A	8,524
435	382361917	GT GBL HLT CR FDALMS		N/A	
10,000	435475GHI	WOMENING PA ASD RO 0.00 10/15/2004	58.382	N/A	5,838
546	AIVSX	INVESTMENT CO AMER	19.010	N/A	10,379
142	461308900	INVESTMENT CO AM/LES		N/A	
10,000	708681ALS	PENN CONV CTR/A RO 0.00 09/01/2003	62.356	N/A	6,236
489	TGWAX	THOM GROWTH FID A	22.550	N/A	11,027

2 New PSN

UID = user019  
ROLLERID = BV2

Schedule B  
Real Estate Owned  
and  
Real Estate Mortgages Payable

	<u>Market Value</u>	<u>Mortgage</u>
<b>PERSONAL RESIDENCE:</b>		
170 Watson Road Erie, Pennsylvania 16505	\$254,000.00	\$201,000.00
<b>RENTAL PROPERTIES:</b> properties owned by partnership, Greater Bay Properties. (1/4 interest in properties)		
133 W. 26th Street Erie, Pennsylvania	\$ 28,000.00	\$ 18,000.00
135 W. 26th Street Erie, Pennsylvania	\$ 28,000.00	\$ 42,000.00*
237 W. 26th Street Erie, Pennsylvania	\$ 40,000.00	
825-827 S. Park Avenue Erie, Pennsylvania ;	\$ 65,000.00	\$ 35,000.00

\*Mortgage is secured by both 235 and 237 W. 26th Street properties



October 4, 1994

**KNOX  
McLAUGHLIN  
GORNALL  
& SENNETT**

*A Professional Corporation*

120 West Tenth Street  
Bite, Pennsylvania 16501-1461  
814-458-2900  
Fax 814-458-4380  
Attorneys & Counselors

The Honorable Larry Pressler  
SR283 Russell Senate Office Building  
Washington, D.C. 20510-4101

Dear Senator Pressler:

I am responding to the written questions which you recently forwarded.

**EXCLUSIONARY RULE**

1. As a United States District Court Judge I would be bound by and follow the Supreme Court's precedents in the Fourth Amendment area, including its decision in United States v. Leon. I would weigh each case very carefully based upon its unique facts and in light of binding Circuit or Supreme Court precedent. I will steadfastly follow binding appellate precedent dealing with the exclusionary rule, whether the holdings take an expansive or restrictive view of the Federal exclusionary rule.

2. As a United States District Court Judge, I would follow and be bound by the decision in United States v. Leon. If, at a later point in time, Congress overturns or extends Leon, I would be guided by and follow that legislative enactment.

**DEATH PENALTY**

1. It is well settled that the death penalty does not constitute cruel and unusual punishment proscribed by the Eighth Amendment.

2. There is no reason that I could not in good conscience impose the death penalty if warranted under the facts and law of a particular case.

**HABEAS CORPUS**

1. The United States Supreme Court has recently had the occasion to address habeas corpus and placed some restrictions upon it. As a United States District Court judge I would follow and be bound by the United States Supreme Court precedent in that regard, as well as any statutory charges enacted by the Congress.

2. As a United States District Court Judge, I would be bound by and follow the current law with respect to exhaustion requirements of all state remedies prior to petitioning in Federal Court for a writ of habeas corpus. There is merit to state courts reviewing in the first instance the convictions of persons convicted of capital crimes within the state system.

JOHN M. McLAUGHLIN  
M. FLETCHER GORNALL  
JOSEPH P. McLAUGHLIN  
WILLIAM C. SENNETT  
JOHN W. SENNETT  
EDWIN L. MCGOWN  
WILLIAM J. KENNY  
RICHARD D. EMMERSON  
RICHARD A. LEVICK  
JACOB M. GORNALL  
HARRY K. THOMAS  
MICHAEL A. FIDRICH  
JAMES L. MAHLEN  
DONALD E. WRIGHT JR.  
RICHARD W. FIDRICH  
ROBERT C. DWYER  
MARILEE M. KUNZIKOWSKI  
CARL N. MOORE  
SEAN J. McLAUGHLIN  
DAVID M. MOORE  
THOMAS A. TURFIZ  
GUY C. FUSTINE  
RICHARD F. BORDONARO  
DEAN BLUMENFELD  
JOHN G. LUDWIG  
TIMOTHY M. SENNETT  
WILLIAM C. WARDNER  
PATRICIA K. SMITH  
PAUL A. FANNELL  
RICHARD A. LANCILLO  
MATTHEW J. McLAUGHLIN  
JOANNA K. BUDDE  
PETER A. PERLIZ  
SUE A. BECK  
MARK G. CLAYTON  
ALBERT W. ZENNER  
DOROTHY D. MORGAN  
THOMAS C. ROYMAN, II  
MARK J. KILMER  
CHRISTOPHER J. CROCKETT

The Honorable Larry Pressler  
October 4, 1994  
Page 2

3. I would not be adverse to time limits requiring Federal District and Circuit courts to act on habeas petitions within a specified period of time provided that the time limits did not preclude appropriate and careful analysis of the habeas petitions.

#### ROLE OF A FEDERAL JUDGE.

In those rare instances where I would be faced with a case of first impression, I would take the following steps: First, in the case of an analysis of a statute, I would attempt to glean from the plain meaning of the statutory language the congressional intent. Second, I would utilize any available legislative history as a further means of gleaning the intent of the drafters of the legislation. Finally, in such cases and those not involving statutory language, I would look for analogous cases even if not on "all fours" which might provide some direction on the issue.

I am absolutely committed to following all Supreme Court precedents faithfully and giving them full force, even if I should personally disagree with some of them.

I do not believe that it is appropriate under any circumstances for a judge's personal political views to ever enter into his or her decision-making.

I believe that stare decisis is one of the bedrock principles of our judicial system. As a United States District Court Judge, I would depart from this principle only in extraordinary cases, involving extreme changes in circumstances, intervening legislation, or higher court decisions.


#### CONSTITUTIONAL ISSUES.

As a United States District Court Judge, I would follow and be bound by the constitutional interpretation handed down by the Circuit Court and the United States Supreme Court. I believe that every attempt should be made to construe the Constitution according to the reasonably apparent intent of the Founding Fathers recognizing at the same time that the Constitution, as periodically interpreted by the United States Supreme Court, is capable of accommodating changing circumstances.

The Federal Sentencing Guidelines have produced greater uniformity in sentencing amongst various jurisdictions.

I hope this will be of help to you.

Very truly yours,

  
Sean J. McLaughlin

SJM:mk  
24LF10044

## UNITED STATES SENATE

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. Full name (include any former names used.)

My full name is William Theodore Moore, Jr.

## 2. Address: List current place of residence and office address(es).

My residence address is 712 Bradley Point Road, Savannah, Georgia 31410.

My business address is P.O. Box 10186, Savannah, Georgia 31412.

## 3. Date and place of birth.

I was born on May 7, 1940 in Bainbridge, Georgia.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

I am married. I was married on July 18, 1964 in Chatham County, Georgia. My Wife's name is Jane Hodges Moore. Her maiden name was Jane Stillwell Hodges. My Wife is employed as a realtor/broker with David Byck Realty, 13 East York Street, Savannah, Georgia 31401.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

From 1958 to 1960, I attended Georgia Military College in Milledgeville, Georgia. In 1960, I was awarded an Associate in Arts degree from the college.

From 1960 to 1961, I attended the University of Georgia in Athens, Georgia. Inasmuch as I was granted early admission to the University's law school, I did not receive an undergraduate degree from the university.

From 1961 to 1964, I attended the University of Georgia School of Law from which I received a LLB degree, (now known as a J.D. degree) in 1964.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

From June 1964 until July 1965, I began practicing as an associate with the law firm of Pierce, Ranitz and Lee (now dissolved) in Savannah, Georgia.

From August 1965 until early 1968, I was employed as an associate by the firm of Richardson, Doremus and Karsman (now dissolved) in Savannah, Georgia.

In 1968, I became an associate and later a partner with the firm of Corish, Smith & Remler (now dissolved) in Savannah, Georgia. I remained with this firm until July 1977.

In July 1977 I was appointed United States Attorney for the Southern District of Georgia. From July 5, 1977 to June 15, 1981 I served as United States Attorney for the Southern District of Georgia.

When I left the United States Attorney's Office in June 1981, I formed a new law partnership known as Sparkman, Harris & Moore in Savannah, Georgia.

In January 1988, I joined Oliver Maner & Gray in Savannah, Georgia, as a partner, when Sparkman, Harris & Moore and Oliver Maner & Gray undertook a partial merger. I am currently a partner at Oliver Maner & Gray.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Attended Georgia Military College on an athletic scholarship.

Honor roll student and graduated with distinction from Georgia Military College.

Distinguished Alumni Award from Georgia Military College for outstanding accomplishments in the field of law.

Attended University of Georgia on an athletic scholarship.

Fellow in American Board of Criminal Lawyers.

Gridiron Secret Society (Univ. of GA).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Savannah Bar Association:

Past president of the Younger Lawyers Section of the Savannah Bar Association (1965);

State Bar of Georgia:

Executive Council member for State Bar of Georgia Younger Lawyers Section (1968 through 1975);

Chairman of the State Bar of Georgia YLS Legal Economics Committee;

Co-Chairman of the State Bar of Georgia Annual Meeting Committee;

Member of the State Bar of Georgia Grievance Tribunal for the Eastern Circuit;

Member of the State Bar of Georgia Committee to Protect the Public and the Lawyer Through a Disciplinary Process That is Prompt and Just.

American Bar Association.

Member of the Southern District of Georgia, United States District Court Criminal Justice Act (CJA) Advisory Committee.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

To my knowledge the only organizations to which I belong that are active in lobbying before public bodies are the State Bar of Georgia, the National Association of Criminal Defense Lawyers and the American Bar Association.

The other organizations to which I belong are:

National Association of Former United States Attorneys;

Fellow in American Board of Criminal Lawyers;



Georgia Association of Criminal Defense Lawyers;  
 Lawyers Club of Atlanta;  
 University of Georgia Law School Association;  
 Savannah Leadership Foundation;  
 Leadership Georgia Foundation;  
 Cottillion Club;  
 Gridiron Secret Society;  
 Downtown Athletic Club (There are no by-laws or admission requirements.)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Superior Courts of State of Georgia (admitted 6/15/64)

Court of Appeals of Georgia (admitted 1/27/65)

Supreme Court of Georgia (admitted 1/27/65)

United States District Court, Southern District of Georgia (admitted 11/9/64)

United States District Court, Middle District of Georgia (admitted 1/20/89)

United States District Court, Northern District of Georgia (admitted 2/8/93)

United States Court of Appeals for the 5th Circuit (admitted 2/20/79)

United States Court of Appeals for the 11th Circuit (admitted 2/10/83)

Supreme Court of the United States (admitted 6/14/80).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving

constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Article on "The Designated Felony Law in Georgia" published in program materials for a seminar sponsored by the Continuing Judicial Education of Georgia on May 4, 1992.

Article on "Grand Jury Practice and Procedure" published in program materials for a seminar sponsored by the Administrative Office of the United States Courts on April 5, 1991.

Article on "Plea Bargaining and Rule 11 Pleas of Guilty in Federal Cases from the Defense Standpoint" published in program materials for a seminar sponsored by the State Bar of Georgia Criminal Law Section on Federal Criminal Practice and Procedure on January 27, 1989.

Article on "The Use of Character Evidence as Circumstantial Evidence in Criminal Trials" published in program materials for a seminar sponsored by the Georgia Association of Criminal Defense Lawyers and State Bar of Georgia Criminal Law Section on January 10, 1987.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Very good. On January 8, 1993 I had a complete physical examination.

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

For approximately the past 10 years, I have served as pro-tem Recorders Court Judge for Garden City, Georgia. I was appointed to this position by the City Council for Garden City. This Court has misdemeanor traffic and misdemeanor criminal jurisdiction.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I am a past member of the Chatham County, Georgia Zoning Board of Appeals. I served on this Board in the early 1970's but I do not have a record of the dates. I was appointed to this Board by the Chatham County Commissioners.

I served as attorney for the Savannah-Chatham Public Board of Education from 1975 until July 1977. I was appointed to this position by the members of the Board of Education.

I served as United States Attorney for the Southern District of Georgia. On July 5, 1977 I was appointed by President Jimmy Carter as United States Attorney for the Southern District of Georgia. I served as United States Attorney from July 5, 1977 until my resignation on June 15, 1981.

I have never been an unsuccessful candidate for elective public office.

17. **Legal Career:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have never served as a clerk to a judge.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

From June 1964 until July 1965, I was an associate with the law firm of Pierce, Ranitz and Lee (now dissolved) in Savannah, Georgia. The firm address was 110 East Oglethorpe Avenue, Savannah, Georgia 31401.

From August 1965 until early 1968, I was an associate by the firm of Richardson, Doremus and Karsman (now dissolved) in Savannah, Georgia. The office address was 111 West Congress Street, Savannah, Georgia 31401.

From 1968 until July 1977, I was an associate and a partner with the firm of Corish, Smith & Remler (now dissolved) in Savannah, Georgia. The firm address was 123 Abercorn Street, Savannah, Georgia 31401.

From July 1977 until June 15, 1981 I served as United States Attorney for the Southern District of Georgia. The United States Attorney's Office was located at 125 Bull Street, Savannah, Georgia 31401.

From June 15, 1981 until December 31, 1987 I was a partner in the firm of Sparkman, Harris & Moore (now dissolved) in Savannah, Georgia. The firm address was 32 East Bay Street, Savannah, Georgia 31401.

From January 1988 to the present date, I have been a partner in the firm of Oliver Maner & Gray in Savannah, Georgia. The firm address is 218 West State Street, Savannah, Georgia 31401.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From June 1964 until July 1977 the general character of my practice was a general practice of law with emphasis on insurance defense, general civil litigation and serving as attorney for the Savannah-Chatham Board of Education.

From July 1977 until June 1981 I served as United States Attorney for the Southern District of Georgia. While serving as United States Attorney, I personally carried an active criminal case load equal to that of the Assistant United States Attorneys. I personally conducted the grand jury investigations on those cases that I tried and sometimes on cases that were tried by others. In addition to being responsible for the administration of the United States Attorney's Office and the supervision of all civil and criminal trials by the government, I met frequently with supervisors and agents of both federal and

state agencies to coordinate efforts between their offices and the United States Attorney's Office.

Since leaving the United States Attorney's Office in 1981, I have concentrated my law practice on the defense of individuals and corporations who are the subject of federal grand jury investigations or have been charged with federal offenses. This is often described as a "white collar" defense practice although I do represent individuals charged with general federal criminal violations. Even though I have also represented clients in criminal cases in state court, in both jury and non-jury matters, the majority of my criminal defense work has been concentrated in federal court. Additionally, during this period of time I have concentrated my practice on general civil litigation in both state and federal courts.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

From June 1964 until July 1977 my typical former clients would be representing private citizens in general matters, including but not limited to, real estate, wills, and small business matters. I also represented liability insurance companies and life insurance companies. During this time I also served as attorney for the Savannah-Chatham Board of Education and for approximately 2 1/2 years specialized in public education matters.

From July 1977 until June 1981 I served as United States Attorney for the Southern District of Georgia and my client was the United States Government.

From July 1981 until the present date my typical clients are corporations, corporate officers, or private individuals who find themselves in need of representation in federal or state court. During this time I have specialized in "white collar" defense, federal grand jury investigation matters and the defense of businesses or individuals charged with general federal criminal violations. Additionally, during this period of time I have concentrated my practice on general civil litigation in both state and federal courts.

I have also specialized in representing clients before administrative tribunals and public and governmental boards.



- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have always appeared in court frequently.

2. What percentage of these appearances was in:

(a) federal courts;

70%

(b) state courts of record;

25%

(c) other courts.

5%

3. What percentage of your litigation was:

(a) civil;

35%

(b) criminal.

65%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

As sole counsel or chief counsel I have probably tried to verdict or judgment 100 or more cases\* since 1964.

\*I began my law practice in 1964 and I changed law firms three times prior to serving as United States Attorney from 1977 through 1981. Each time I changed law firms most of my files remained with the old firm and many have now been destroyed. I have never kept a personal notebook or personal record of all of my trials; therefore, I am forced to estimate in answering this question.

## 5. What percentage of these trials was:

## (a) jury;

I estimate 70% jury trials.

## (b) non-jury.

I estimate 30% non-jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. U.S. v. Hester, Holley, Adamson, et. al. This case was personally tried by me in United States District Court, Southern District of Georgia, in Augusta, Georgia, when I was United States Attorney for the Southern District of Georgia. Defendants Glenn B. Hester, R. Eugene Holley, John R. Adamson, III and Jack E. Fink were charged with willful misapplication of bank funds, making false entries in books, reports and statements of the bank, and knowingly making false statements to the bank for the purpose of influencing loan applications. The bank involved was The First Augusta Bank and Trust Co. which was insured by the Federal Deposit Insurance Corporation. Co-defendants Hester and Holley were law and business partners. Hester was a major stockholder in the bank and served as a director, a member of the Loan and Finance Committee and attorney for the bank. Holley had been a twelve year State Senator and Chairman of the Senate Banking and Financing Committee. Adamson was the president and a director of the bank and was a member of the bank's Loan and Investment committee. Fink was the Chairman of the Board of the bank. The major point at issue in this case as whether or not these bank insiders had willfully and intentionally committed various acts of bank fraud. A jury verdict of guilty was returned

against defendants Hester, Holley and Adamson.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government. I also participated in the preparation of the government's appeal brief.

Dates of Trial: February 19, 1980 through February 27, 1980

Docket Number: CR179-149

Judge: Anthony A. Alaimo

Prosecutor: William T. Moore, Jr.

Defense Counsel: Hon. R. Jackson Smith, Jr., Administrative Law Judge, 334 Meeting Street, Federal Building, Suite 125, Charleston, South Carolina 29403, telephone number (803) 727-4511; and Robert E. Falligant, Jr., Falligant & Toporek, 23 East Charlton Street, Savannah, Georgia 31401, telephone number (912) 236-2774

I believe that this case is still the largest bank fraud case to be tried in Georgia.

This case is reported as United States v. Adamson, 665 F.2d 649 (5th Cir. Unit B 1982) and 700 F.2d 953 (5th Cir. Unit B 1982).

2. U.S. v. Roscoe Dean, et. al. This case was personally tried by me in United States District Court, Southern District of Georgia, in Savannah, Georgia, when I was United States Attorney for the Southern District of Georgia. Roscoe Emory Dean, Jr. and John Thomas Bigley were charged with conspiring to import cocaine, marijuana and methaqualone into the Southern District of Georgia. Roscoe Dean had been a fourteen year State Senator and unsuccessful candidate for governor. Dean had a plan to run again for governor in 1982 but in order to carry out his plan needed front money to finance his campaign. Accordingly, he solicited some convicted felons in Atlanta, who were his friends, to arrange contact with drug smugglers in Florida who could finance a drug smuggling operation and provide him with enough money to win the election. Even though Dean solicited millions of dollars in exchange for promises to appoint narcotics

figures to government office and to selectively prosecute competing drug smugglers if elected governor, he alleged he was entrapped into committing the conspiracy offense. A jury verdict of guilty was returned against both Dean and Bigley.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government. I also participated in the preparation of the government's appeal brief.

Dates of Trial: April 25, 1980 through May 14, 1980

Docket Number: CR480-13

Judge: B. Avant Edenfield

Prosecutor: William T. Moore, Jr.

Defense Counsel: John Evans, Tampa, Florida and Washington, D.C. (now deceased) and Thomas R. Taggart, 1719 Abercorn Street, Savannah, Georgia 31401, telephone number (912) 236-6949

This case is reported as United States v. Dean, 666 F.2d 174 (5th Cir. Unit B 1982).

3. U.S. v. Charles Davis, et. al. This case was personally tried by me in United States District Court, Southern District of Georgia in Savannah, Georgia, when I was United States Attorney for the Southern District of Georgia. Charles Davis and others were indicted for destroying a lounge by means of arson, mail fraud and conspiracy. Inasmuch as Davis had a lounge that was not doing well financially, he destroyed it by fire and attempted to collect for the destruction from his insurance company. A jury verdict of guilty was returned.

This was an important first test case by the United States Government involving arson under Section 844(i) because at that time the statute only referred to "an explosive" and not "fire". Congress later amended this statute by adding the word "fire". The successful prosecution of this case led to similar indictments and prosecutions from other United States Attorneys Offices around the country. This is the case for which I received a national award from the United States Department of the Treasury.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government.

Dates of Trial: August 23, 1978 through August 25, 1978 against Davis

Docket Number: CR478-73

Judge: A. A. Lawrence (now deceased)

Prosecutor: William T. Moore, Jr.

Defense Counsel: John Wright Jones, 701 Abercorn Street, Savannah, Georgia 31401, telephone number (912) 236-6161

4. U.S. vs. Dr. Dunbar and Paul Eugene Robinson. This case was personally tried by me in United States District Court, Southern District of Georgia, in Brunswick, Georgia when I was United States Attorney for the Southern District of Georgia. Defendants Dr. William Dunbar, of St. Mary's, Georgia, and Clarence Eugene Robinson, of Jacksonville, Florida, were indicted by a federal grand jury for conspiring to distribute controlled substances in the Southern District of Georgia. This case was made as an undercover case joint operation by the Georgia Bureau of Investigation in Georgia and the Federal Bureau of Investigation in Florida. A jury returned a guilty verdict against both Dunbar and Robinson. After the verdict the defendants obtained bond and defendant Robinson later absconded and failed to show for sentencing. Defendant Robinson was placed on the FBI's ten most wanted list. Some years later he was captured after first shooting an FBI agent.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government.

Dates of Trial: January 3, 1978 through January 4, 1978

Docket Number: CR277-16

Judge: Anthony A. Alaimo

Prosecutor: William T. Moore, Jr.



Defense Counsel: Randall M. Clark, P.O. Box 1395,  
Brunswick, Georgia 31521-1395,  
telephone number (912) 264-6661;  
John Forbes and Mose Meade, Jr., 817  
North Main Street, Jacksonville,  
Florida 32202, telephone number  
(904) 354-4773

5. U.S. v. Farrar. This case was personally tried by me in United States District Court, Southern District of Georgia, in Savannah, Georgia, when I was United States Attorney for the Southern District of Georgia. Defendant, John Farrar, was a practicing attorney in Savannah, Georgia who was indicted for mail fraud resulting from a successful attempt on his part to defraud several major insurance companies out of benefits surrounding false accident and medical reports. Farrar had also committed a fraud upon the State of Georgia by being admitted to take and pass the Georgia State Bar examination without disclosing that he had been disbarred under another identity in the State of Louisiana. Farrar, while a practicing attorney in Savannah, was indicted and tried for mail fraud. A jury returned a verdict of guilty against Farrar.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government.

Dates of Trial: May 9, 1978 through May 11, 1978

Docket Number: CR478-15

Judge: A. A. Lawrence (now deceased)

Prosecutor: William T. Moore, Jr.

Defense Counsel: Reginald Haupt (no longer practicing law)

One of the important aspects of this case was the fact that John Farrar, at the time of his trial and conviction, was in the United States Marshal's Service's Witness Security Program under an assumed name in Savannah, Georgia. Mr. Farrar had been a defendant and cooperating government witness in a major organized crime case in the State of Louisiana and had been given a new identity and placed in the Witness Security Program in Georgia at the time that he committed the fraud upon the State Bar of Georgia and passed the State Bar exam using

the new identity that had been given him by the Marshal's Service and not disclosing to the State of Georgia that he had previously been disbarred under another name in the State of Louisiana.

6. U.S. v. Dixon. This case was personally tried by me in United States Court, Southern District of Georgia, in Waycross, Georgia, when I was United States Attorney for the Southern District of Georgia. Defendant, John Dixon, was a practicing chiropractor in Waycross, Georgia. Dixon and his wife devised a scheme to defraud the Medicare program by charging for x-rays and other treatments to elderly Medicare patients who were on the Medicare rolls. Dixon, together with his wife, was indicted on various counts of fraud against the government. At the time of this prosecution, it was the first prosecution of its type in the State of Georgia. A jury returned a verdict of guilty against the Dixons.

I supervised the pre-indictment investigation, presented the case to the grand jury, handled the pre-trial motions and was the lead counsel at trial for the government.

Dates of Trial: October 20, 1977 through October 21, 1977

Docket Number: CR577-15

Judge: Anthony A. Alaimo

Prosecutor: William T. Moore, Jr.

Defense Counsel: Leon A. Wilson, II, 107 Albany Avenue, Waycross, Georgia 31501-3502, telephone number (912) 283-3820

7. U.S. v. Paul W. Draughn, Moses Jackson "Jack" Bowen, II, et. al. I was defense counsel for Mr. Draughn in this case. The case was tried in United States District Court, Southern District of Georgia, in Augusta, Georgia. There were a total of nine defendants in this case, and all of the defendants plead guilty except for Mr. Draughn. The charges against the various defendants were conducting a continuous criminal enterprise, narcotics conspiracy, conspiracy to manufacture, distribute and possess narcotics, use of the mail and telephone to distribute the proceeds of a felony and arson. My client, Mr. Draughn, was charged only in the main narcotics conspiracy count and in the arson count of the

indictment. Mr. Draughn was a successful farmer, timber grower and tobacco warehouseman. He was married and had successfully raised four children who had graduated from college. One of his children was a stockbroker, one was in medical school and two were in the tobacco warehousing business with him. Mr. Draughn lived in the small Georgia town of Metter, and one of his friends in Metter was co-defendant Jack Bowen. Jack Bowen was a legitimate, although not so successful, farmer but, unknown to Mr. Draughn, was also deeply involved in an ongoing narcotics conspiracy. Mr. Bowen talked Mr. Draughn into going in halves with him on growing a sweet potato crop. After harvesting, the sweet potatoes were stored in a warehouse owned by Mr. Bowen. Unknown to Mr. Draughn, while the sweet potatoes were stored, Mr. Bowen hired someone to burn the warehouse so he (Bowen) could collect the full amount of the insured crop plus make a claim for all of the personal property and real estate that was destroyed by the fire. All of the defendants, with the exception of Mr. Draughn, who insisted upon his innocence, plead guilty and some of the co-defendants were government witnesses at Mr. Draughn's trial. At the close of the government's evidence I made a motion for judgment of acquittal which was granted by Judge Dudley Bowen. Unfortunately, several years after he had been acquitted in this case, Mr. Draughn was killed in a truck accident while on the way home one evening from his tobacco warehouses.

I did not begin to represent Mr. Draughn until after he had already been indicted by the federal grand jury. After assuming the defense of Mr. Draughn's case I employed a retired FBI agent to investigate and help me prepare the case for trial. I handled all of the pre-trial motions, the pre-trial witness interviews, and personally tried the case for Mr. Draughn.

Dates of Trial:	November 23, 1987 through November 24, 1987
Docket Number:	CR687-008
Judge:	Dudley H. Bowen, Jr.
Prosecutor:	Joseph D. Newman, Assistant United States Attorney, 100 Bull Street, Savannah, Georgia 31401, telephone number (912) 652-4422
Defense Counsel:	William T. Moore, Jr.

8. U.S. v. Jon Lott, et. al. I defended Mr. Lott in this case that was tried in United States District Court, Southern District of Georgia, in Waycross, Georgia. Mr. Lott was one of eight defendants charged with conspiracy to defraud the United States and false demands against the United States arising out of a peanut crop insurance fraud. At the time of his indictment Mr. Lott was the president of the Nicholls State Bank in Nicholls, Georgia, married to a school teacher and the father of two small children. One of the defendants in this case, Benny Crews, had plead guilty to an information and was a main government witness against Mr. Lott and the other defendants who went to trial. Mr. Crews and a co-defendant named Eason, were the main perpetrators in the crop insurance fraud. Both Crews and Eason banked with Mr. Lott at the Nicholls State Bank. Through the years, Lott had made them numerous crop loans and his bank regularly cashed checks that they brought into the bank that Crews and Eason had been given for peanut purchases from warehouses and from crop losses. Because Nicholls, Georgia was a very small town and all of the tellers and bank officers personally knew Crews and Eason and had known them as regular customers for years, the bank did not closely scrutinize checks that were cashed for them. After the government caught on to Crews and had him plead to an information he then became a government informant. Crews quickly saw that the best way for him to avoid prison was to attempt to set up innocent people, such as Mr. Lott, and Crews, with government assistance, then set about making undercover tape recordings where Crews would lead Mr. Lott and others into conversations that they thought were innocent. Crews told the government the truth about some of his co-conspirators but he did not tell them the truth about Mr. Lott. Crews quickly saw that the government agents thought it would be a feather in their cap to indict a bank president instead of just a bunch of poor farmers, so Crews lied about Lott and the government took the bait and indicted Mr. Lott. I defended Jon Lott at the trial and at the close of the government's evidence made a motion for judgment of acquittal which was granted by Judge Edenfield. Jon Lott was a nice and trusting young bank president and an innocent man who was set up by Crews in an effort by Crews to save his own skin. Since his acquittal, Mr. Lott has gone on to be a successful banker and family man.

I did not begin to represent Mr. Lott until after he had already been indicted by the federal grand jury. I handled all of the pre-trial motions, the pre-trial witness interviews, and personally tried the case for Mr. Lott.



Dates of Trial: January 18, 1988 through January 24, 1988

Docket Number: CR587-7

Judge: B. Avant Edenfield

Prosecutors: Lawrence B. Lee, Assistant United States Attorneys, 100 Bull Street, Savannah, Georgia 31401, telephone number (912) 652-4422 and Arthur W. Leach, Assistant United States Attorney, Richard Russell Federal Building, 75 Spring Street, S.W., Atlanta, Georgia 30303, telephone number (404) 331-3784

Defense Counsel: William T. Moore, Jr.

9. U.S. v. Dr. Jose Ramon Castro. I defended Dr. Castro in this trial in United States District Court, Southern District of Georgia in Waycross, Georgia. Dr. Castro was indicted on twelve counts of illegally dispensing and distributing Schedule IV controlled substances. Dr. Castro was a licensed physician who was practicing medicine in Alma, Georgia as a general practitioner. The basis of the charges against Dr. Castro were prescriptions for Schedule IV controlled substances, Valium and Fastin, which the doctor had written for three undercover agents working for the federal government or local law enforcement agencies who procured the prescriptions during visits to the doctor's Alma, Georgia office. Dr. Castro contended that he had given the prescriptions for legitimate medical reasons. Dr. Castro was convicted by a jury on four out of twelve counts. Due to the fact that Dr. Castro received a probated sentence under the Federal Sentencing Guidelines and the State of Georgia did not suspend his medical license, he chose not to appeal his conviction.

I did not begin to represent Dr. Castro until after he had already been indicted by the federal grand jury. I handled all of the pre-trial motions, the pre-trial witness interviews, and personally tried the case for Dr. Castro.

Dates of Trial: May 6, 1991 through May 8, 1991

Docket Number: CR591-14

Judge: B. Avant Edenfield



Prosecutor: Karl I. Knoche, Assistant United States Attorney, 100 Bull Street, Savannah Georgia 31401, telephone number (912) 652-4422

Defense Counsel: William T. Moore, Jr.

10. Susan King Oetgen v. Ronald Elrod. This case was tried by me as lead counsel and by my law partner, Greg Hodges, as associate counsel in the Superior Court of Chatham County, Georgia in Savannah, Georgia. On November 17, 1982 Susan Oetgen was in her automobile on Interstate 16 in Chatham County, Georgia heading to the Savannah International Airport Delta office. While traveling on Interstate 16, her vehicle was struck by a vehicle driven by Ronald Elrod and this caused her vehicle to then strike another vehicle driven by Mr. Stinson. All three vehicles were severely damaged. As a result of this accident, Ms. Oetgen received soft tissue whiplash type injuries to her neck and back. She was taken to the emergency room at Memorial Medical Center and released after several hours. Susan had worked in the sales office of Delta Airline for over 20 years and had an excellent employment record. After this accident she continued to have severe pain and discomfort in her back, even though all x-rays were negative. Susan came to me to represent her shortly after the accident and I advised her because of the type of back injury she had received and the possibility that even though all x-rays were now negative, she could later develop problems that might require surgery, that she should postpone any settlement or filing of a lawsuit as long as possible. During the next two years Susan went from a happy, active person to a much less active person who was always suffering from chronic back pain. I filed suit for Susan in October 1984, which was just about 30 days before the statute of limitations would have run. Susan was very apprehensive about having to go to trial and we tried every way possible to get a reasonable settlement for her from Mr. Elrod's insurance company. However, prior to trial, the most they would offer was \$20,000.00. In my closing argument to the jury I asked the jury to award Susan \$250,000.00. After deliberating for several hours the jury returned an award of \$249,900.00 for Susan. At that time, this was the largest soft tissue injury jury verdict in the history of Chatham County, Georgia.

I drafted and filed this civil suit for Ms. Oetgen. I handled all of the pre-trial discovery and pre-trial motions. I worked with a professional photographer and illustrator to prepare photographs and diagrams of the accident scene for use at trial. I prepared the case for

trial and personally tried this case together with my law partner, Greg Hodges, for Ms. Oetgen.

Dates of Trial: April 25, 1988 through April 28, 1988

Docket Number: X84-3928-G

Judge: Eugene H. Gadsden

Plaintiff's Counsel: William T. Moore, Jr. and I. Gregory Hodges

Defense Counsel: Joseph H. Barrow and Luhr G. C. Beckmann, Jr., Beckmann & Pinson, 127 Abercorn Street, Savannah, Georgia 31401, telephone number (912) 236-6400

The following is a list of ten attorneys who have had litigation matters directly with me in the recent past:

Honorable W. Leon Barfield  
United States Magistrate Judge  
P.O. Box 1504  
Augusta, GA 30903  
(706) 722-8319

Mr. Karl I. Knoche  
Assistant U.S. Attorney  
100 Bull Street  
Savannah, Georgia 31401  
(912) 652-4422

Mr. Joseph D. Newman  
Lead Drug Task Force Attorney  
United States Attorney's Office  
100 Bull Street  
Savannah, GA 31401  
(912) 652-4422

Mr. Carlton R. Bourne  
Assistant U.S. Attorney  
100 Bull Street  
Savannah, Georgia 31401  
(912) 652-4422

Mr. William H. McAbee, II  
Assistant U.S. Attorney  
100 Bull Street  
Savannah, Georgia 31401  
(912) 652-4422

Mr. Larry D. Thompson  
King & Spalding  
Suite 4900  
191 Peachtree Street, N.E.  
Atlanta, GA 30303-1760  
(404) 572-4600

Mr. Fred Kramer  
Assistant U.S. Attorney  
100 Bull Street  
Savannah, GA 31401  
(912) 652-4422

Mr. James L. Coursey, Jr.  
Assistant U.S. Attorney  
100 Bull Street  
Savannah, Georgia 31401  
(912) 652-4422

Ms. Sharon T. Ratley  
Assistant U.S. Attorney  
P.O. Box U  
Macon, GA 31202-0076  
(912) 752-3511

Mr. G. Mason White  
Brennan, Harris & Rominger  
2 East Bryan Street  
Savannah, Georgia 31401  
(912) 233-3399

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In addition to my civil and criminal trial experience described above, I have a great deal of experience in representing clients before administrative tribunals and boards such as the State Board of Workers Compensation, Georgia Department of Natural Resources, State Board of Pharmacy, State Board of Education, State Board of Regents, Board of Education, hospital authorities, and the Corps of Engineers. I have also participated in administrative hearings conducted by the Department of the Army and local zoning boards.

On many occasions I have represented corporations and individuals in federal grand jury investigation matters. I have successfully had indictments dismissed, pre-trial, by either the Court or the government for several clients.

Additionally, I have always maintained a fairly active civil litigation practice where I represent both plaintiffs and defendants in civil litigation. I have either tried or settled substantial civil litigation matters and just recently received a settlement of \$475,000.00 for a client one week prior to trial in a case involving the accidental death of his wife.

I have lectured on legal topics at the Georgia Institute of Trial Advocacy for the Institute of Continuing Legal Education in Georgia at both the University of Georgia School of Law and Mercer University School of Law, the Federal Law Enforcement Training Center in Brunswick, Georgia and at seminars sponsored by the State Bar of Georgia Criminal Law Section and Georgia Association of Criminal Defense Lawyers, at seminars sponsored by the Institute of Continuing Legal Education in Georgia and at seminars sponsored by the Administrative Office of United States Courts, Defender Services Division.

I have also lectured at the Institute of Continuing Judicial Education of Georgia Juvenile Court Judges Annual Seminar.

Many years ago I taught business law courses at Savannah State College and I have taught a business law course for the National Secretaries Association at Armstrong State College.

I have attended seminars on continuing legal education sponsored by the State Bar of Georgia, The Georgia Association of Criminal Defense Lawyers, The Institute of Continuing Legal Education in Georgia, The Georgia Institute of Trial Advocacy, The National Association of Criminal Defense Lawyers, and The American Bar Association Division for Professional Education. I have also attended workshops sponsored by the federal court concerning the Federal Sentencing Guidelines. Each year I receive significantly more CLE hours than are required by the State Bar of Georgia.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As a partner in Oliver Maner & Gray, I receive compensation in two manners. From all legal fees collected by Oliver Maner & Gray for services rendered by me, 50% of those fees are distributed to me, not less than monthly, in the form of a "guaranteed" payment. The other 50% of the fees collected are retained by the firm for the payment of all expenses of the partnership. Periodically, at least twice a year, I receive a distribution of the profits of the firm. The amount of the profit distribution is determined by the ratio of my collections compared to the fees collected by all of the partners.

Upon discontinuing my relationship with Oliver Maner & Gray, I will continue to receive distributions as long as the firm collects fees for services rendered by me prior to my departure. This will include the guaranteed payments and a relative percentage of the firm's profits as long as such collections occur but not beyond the calendar year immediately following the calendar year of my withdrawal. There are no other arrangements for any type of compensation or payments to be received from Oliver Maner & Gray once I leave the firm.

I have a profit sharing/401K plan with my law firm, Oliver Maner & Gray, with a vested account balance as of this date of \$336,000.00 plus any profit sharing contribution and 401K contribution that will made for the 1994 calendar year.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

If I were the judge in a proceeding in which there might be a potential conflict of interest or in which my impartiality might reasonably be questioned, I would disqualify myself and withdraw from the proceeding. If the proceeding were a matter that did not require an automatic disqualification, but might be considered as a potential conflict, then I would notify the parties and their counsel of the potential conflict and only



continue in the proceeding if all agreed in writing and on the record that the judge should not be disqualified. I would also be guided on questions of potential conflict by the Code of Conduct for United States Judges.

The only category of litigation and financial arrangement that would likely present potential conflicts-of-interest during my initial service in the position to which I have been nominated would be proceedings where I have served as a lawyer in the matter in controversy, or a lawyer with my former law firm served as a lawyer in the matter in controversy during the time that I was associated with the law firm, or if I still had a financial interest in my former law firm and the matter in controversy was being handled by a member of my former law firm.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I do not have any plans, commitments or arrangements to pursue outside employment and would devote my full service to the Court.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Financial Disclosure Report, Form AO-10 (Rev. 1/93) attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Financial net worth statement attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

For my entire law practice of almost 30 years, I have regularly given legal advice and represented people who could not afford legal services. I have accepted many state and federal pro-bono appointments where I received no compensation at all or minimal compensation under the Criminal Justice Act.

In the past three years I have taken approximately 10 pro-bono cases involving criminal court appearances. Additionally, I have performed other pro-bono services for indigent clients in matters involving child support, debt collection, traffic violations and estate matters. I have handled court cases such as:

State of Georgia vs. Stephen Gilmore (shoplifting case) and U.S. vs. Stephen Gilmore (parole violations case). Mr. Gilmore is a disabled Vietnam veteran with mental and alcohol problems. As a result of my representing the defendant, I obtained his release from jail and the court admitted him to a VA hospital. I devoted 25 hours to this case.

State of Georgia vs. Robert Freeman. Mr. Freeman is a young black man who resides at his mother's residence in what is known in Savannah as a "known drug area". Mr. Freeman was falsely arrested and accused of obstructing a police officer and committing a drug offense because he happened to be standing out in the street in the wrong place at the wrong time. As a result of my representing the defendant, the criminal charges were dismissed. I devoted 15 hours to this case.

State of Georgia vs. Gerald Schantz. Mr. Schantz was indicted by the State of Georgia for shooting a man he caught breaking into his tenant's automobile outside of his house. A jury acquitted Mr. Schantz. I devoted 70.3 hours to this case.

U.S. vs. Timothy Ford. I represented Mr. Ford when he was caught stealing Social Security checks from a neighbor's mailbox and when he was subsequently charged with parole violations. I devoted 6.1 hours to this case.

U.S. vs. Willard Vandiver. I represented Mr. Vandiver when he was charged with stealing scrap metal off of a military installation and later when he was subsequently charged with parole violations. I devoted 5.1 hours to this case.

U.S. vs. Edison Jordan. I had not been Mr. Jordan's trial counsel but after he filed a pro se appeal of his sentence for conspiring to possess cocaine with the intent to distribute same, the 11th Circuit Court of Appeals appointed me to represent Mr. Jordan before the Court of Appeals and the United States Supreme Court. I devoted 50.6 hours to this case.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminated -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership, What you have done to try to change these policies?

I do not belong to any organization that discriminates on the basis of race, sex or religion. From 1965 through 1992 I was a member of the Savannah Yacht Club. The Savannah Yacht Club did not have any African-American members at the time I was a member. When I was a member of this club I spoke out personally to club members and members of the Board of Stewards in support of increasing the diversity of the club's membership. I also spoke out publicly at meetings of the organization against any form of discrimination.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated.)

Yes, there is a selection commission in my jurisdiction appointed by Senator Sam Nunn to recommend candidates for nomination to the federal courts. I was one of six finalists for this judgeship recommended by the commission to Senator Nunn and Senator Nunn made the final selection.

I was aware that a vacancy existed on the bench in the Southern District of Georgia that would be filled by President Clinton. Therefore, on December 1, 1992 I wrote a letter to Senator Sam Nunn requesting that I be considered as a candidate to fill this vacancy. On December 15, 1992 Senator

Nunn wrote me advising me that he was establishing a judicial review panel to screen proposed nominees and he would advise the panel of my interest in this vacancy. In February 1993 I learned through the news media that Senator Nunn had established a committee to advise him on the selection of individuals for the positions of Federal District Court Judge, United States Attorney and United States Marshal and that Mr. Gordon D. Giffin, an attorney in Atlanta, Georgia, had been selected as chairman of this committee. On February 22, 1993 I wrote a letter to Mr. Giffin advising him of my desire to be considered for the existing vacancy on the United States District Court for the Southern District of Georgia. On March 23, 1993 Mr. Giffin responded to my letter and advised me that my letter would be made a part of the committee's file and my qualifications would be given consideration by the committee. Thereafter, on April 14, 1993 Senator Nunn wrote me a letter outlining the committee's review process, enclosing a list of the members of the Judicial Selection Advisory Committee formed by him, and enclosing an application form to be completed and returned to him and each member of the committee no later than April 30, 1993. By letter dated April 28, 1993 I mailed to Senator Nunn and each committee member my application for the existing vacancy. I was later advised by the secretary to the committee that the committee would interview me and I was interviewed by the committee on June 9, 1993. Some weeks later I received a telephone call from a member of Senator Nunn's staff advising me that Senator Nunn would interview me on July 8, 1993. The interview with Senator Nunn on July 8th was the only personal contact that I had with Senator Nunn during the entire selection process until he telephoned me on Saturday August 7, 1993 to advise me that he was recommending me to President Clinton to fill the vacancy on the federal bench in the Southern District of Georgia.

On December 27, 1993 I was interviewed in Washington, D.C. by Assistant Attorney General Eleanor Dean Acheson and members of her staff in the Office of Policy Development. In June, 1994 I was interviewed by a representative of the Federal Bureau of Investigation. In June, 1994 I was interviewed by a representative of the American Bar Association, Standing Committee on Federal Judiciary. On July 13, 1994 I received a telephone call from a representative of the White House Counsel's Office informing me that my nomination had been forwarded to the United States Senate.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.



No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

This criticism has been around since the Supreme Court asserted its right to declare a law of Congress unconstitutional. Recently there appears to be an increase in the criticism of "judicial activism". Throughout history, and particularly the English history of the Judicial branch, the courts have been designated as a "dispute settling mechanism". They have not been set up and are not now funded or staffed to be a "problem solving mechanism".

The exercise of judicial power involves profound judgment. A trial court must always be aware of the decisions of higher courts which bear upon and often control the decision at hand. In making a decision, the judge must be able to demonstrate that he began from recognized legal principles and where there is no clear legal precedent he attempted to decide the matter consistent with similar holdings of higher courts. On cases of first impression, the trial court should consider arguments of counsel and the reasoning of other jurisdictions. Decisions should be made in a politically neutral way and



should be based on law and facts consistent with the high duty to administer equal justice and fairness to all.

Judicial judgment also involves restraint and not over reaching without failing to exercise judicial power when necessary. This is essential to what it means to be a judge and may ultimately be best described in terms of judicial temperament.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 5, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Moore, William T., Jr.	2. Court or Organization  United States District Court Southern District of Georgia	3. Date of Report  7/15/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  United States District Court Judge	5. Report Type (check appropriate type) <u>X</u> Nomination, Date <u>7/13/94</u> ___ Initial ___ Annual ___ Final	6. Reporting Period  1/1/93 - 12/31/93 1/1/94 - 7/15/94
7. Chambers or Office Address  Oliver Maner & Gray P.O. Box 10186 (218 W. State St.) Savannah, GA 31412	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Attorney/Partner

Oliver Maner &amp; Gray (a partnership)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☐

NONE (No reportable agreements)

October 1, 1993 Oliver Maner &amp; Gray Partnership Agreement (see paragraph VIII)

January 1, 1988 Oliver Maner &amp; Gray Savings &amp; Profit Sharing Plan and Trust (401K Profit Sharing Plan)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1	1/1/93 - 12/31/93	Oliver Maner & Gray - partnership income	\$ 214,535.00 / pr
2	1/1/94 - 7/15/94	Oliver Maner & Gray - partnership income	\$ 95,572.96
3	1/1/93 - 12/31/93	David Byck Realty - commission (spouse)	\$ 23,852.00
4	1/1/94 - 7/15/94	David Byck Realty - commission (spouse)	\$ 7,863.01
5			\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
William T. Moore, Jr.	7/15/94

**IV. REIMBURSEMENTS and GIFTS** – transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☒ X

NONE (No such reportable reimbursements or gifts)

1		
2		
3		
4		
5		
6		
7		
8		

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☒ X

NONE (No such reportable gifts)

1		\$
2		\$
3		\$
4		\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☐

NONE (No reportable liabilities)

1	Trust Company Bank of Savannah P.O. Box 8668, Savannah, GA 31412	Personal Note	K
2	Bank United of Texas P.O. Box 2824, Houston, TX 77252	Real Estate Mortgage	L
3			
4			
5			
6			
7			

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

William T. Moore, Jr.

7/15/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Identification of Assets (including trust accounts)  Indicate, where applicable, owner of the asset by using the parenthetical: (1) for joint ownership of reporting individual and spouse, (2) for separate ownership by spouse, (3) for ownership by dependent child.  Place "X" after each asset except from prior disclosure.	B. Income During Reporting Period		C. Gain, Loss At End of Reporting Period		D. Transactions During Reporting Period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asset Type (A-E)	Type (1-2) Div. Int. Rent Other	Value End of Period (1-2)	Value Method (1-2) Cost FMV	(1) Type (1-2) Buy/Sell/ Div./Mortg. Other	(2) Date Month/ Day	(3) Value Code (1-2)	(4) Gain/ Loss (A-E)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 STERNE, AGEE & LENCH, INC. 33 BULL STREET SAVANNAH, GA 31401 IRA ACCOUNT	B	DIV. INT.	K	T	EXEMPT				
2 OLIVER, MANER & GRAY SAVINGS & PROFIT SHARING PLAN AND TRUST - 401K PROFIT SHARING PLAN	E	DIV. INT. RENT OTHER	N	Q, T	EXEMPT				
3 3801 HARBERSHAM STREET SAVANNAH, GA - APARTMENT BLD.	D	RENT	M	R	EXEMPT				
4 STERNE, AGEE & LENCH, INC. 33 BULL STREET SAVANNAH, GA 31401 IRA ACCOUNT (S)	C	DIV. INT.	K	T	EXEMPT				
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. D3 & D4)	A=1,000 or less B=1,001 to 500,000	B=51,001 to 50,000 C=50,001 to 100,000	D=50,001 to 1,000,000 E=1,000,001 to 1,000,000	D=50,001 to 1,000,000 E=1,000,001 to 1,000,000
2 Value Codes: (See Col. C1 & D1)	A=1,000 or less B=1,001 to 100,000	C=100,001 to 1,000,000 D=1,000,001 to 1,000,000	E=1,000,001 to 1,000,000 F=1,000,001 to 1,000,000	F=1,000,001 to 1,000,000 G=1,000,001 to 1,000,000
3 Value Method Codes: (See Col. C2)	1=Fair Market Value 2=Other	3=Other 4=Other	5=Other 6=Other	7=Other 8=Other

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
William T. Moore, Jr.	7/15/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

II. AGREEMENTS. My partnership agreement provides that if I withdraw from the firm I will continue to receive distributions as long as the firm collects fees for services rendered by me prior to my departure, but not beyond the calendar year immediately following the calendar year of my withdrawal. Additionally, the firm will pay me the value of my partnership capital account when I leave. There are no other arrangements for any type of compensation or payments to be received from Oliver Maner & Gray once I leave the firm.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature William T. Moore, Jr. Date July 15, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	15	000 00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured	27	840 00
Listed securities—add schedule			Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	5	000 00
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	249	500 00
Real estate owned—add schedule	310	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property*	155	880 00	Auto loans	12	440 00
Cash value—life insurance	7	500 00	MasterCard (H)	4	000 00
Other assets—itemize:			MasterCard (W)	4	200 00
Money Market (W)		120 00			
IRA (W)	36	398 00			
IRA (H)	26	560 00			
Profit Sharing Plan (H)	336	000 00	Total liabilities	302	980 00
Total assets	887	458 00	Net worth	584	478 00
			Total liabilities and net worth	887	458 00
CONTINGENT LIABILITIES*			GENERAL INFORMATION		
As endorser, cosigner or guarantor		00 00	Are any assets pledged? (Add schedule.) Yes	261	940 00
On leases or contracts (W—Auto)	14	200 00	Are you defendant in any suits or legal actions? No		
Legal Claims		00 00	Have you ever taken bankruptcy? No		
Provision for Federal Income Tax	20	000 00			
Other special debt		00 00			

\*Value of automobiles and personal property is estimated value.

WILLIAM T. MOORE, JR. - Social Security No. 252-64-2697

Attachment to Personal Data Questionnaire  
United States Senate  
Committee of the Judiciary

## ATTACHMENT TO FINANCIAL STATEMENT

## NET WORTH

WILLIAM T. MOORE, JR. - Social Security No. 252-64-2697

## SCHEDULE OF REAL ESTATE OWNED:

712 Bradley Point Road Savannah, Georgia 31410	Market Value \$200,000.00
3801 Habersham Street Savannah, Georgia 31405	Market Value \$110,000.00

## SCHEDULE OF REAL ESTATE MORTGAGES PAYABLE:

Fairfield Financial Associates of Macon - Balance \$150,000.00  
Bank United of Texas FSB - Balance \$99,500.00

## SCHEDULE OF ASSETS THAT ARE PLEDGED:

Residence - 712 Bradley Point Road, Savannah, Georgia  
Apartment Building - 3801 Habersham Street, Savannah, Georgia  
1993 Honda Accord EX

RESPONSES OF WILLIAM T. MOORE, JR. TO  
QUESTIONS POSED BY SENATE JUDICIARY  
COMMITTEE MEMBER SENATOR LARRY PRESSLER

EXCLUSIONARY RULE

- 1) What are your views on the issue? Do you take an expansive or restrictive view of the Federal exclusionary rule? Do you favor a broader "good faith" exception to the rule than current law allows?

RESPONSE:

The existing "good faith" exception as set forth in Leon is sufficient to allow the admission of seized evidence when the officer has made a good faith mistake.

- 2) What do you think of a proposal made last Congress which would have overturned Leon and the 5th Circuit exception by modifying the exclusionary rule so as to admit evidence obtained with a defective warrant only if the officers requesting the warrant and the issuing magistrate can be proven to be "detached and neutral"?

RESPONSE:

I do not believe it to be necessary to modify the exclusionary rule and the Leon exception in this manner because the law already requires that the magistrate be neutral and impartial.

DEATH PENALTY

- 1) Do you feel the death penalty constitutes one of the "cruel and unusual punishments" proscribed by the Eighth Amendment?

RESPONSE:

The Supreme Court has upheld the death penalty against an Eighth Amendment challenge and, if confirmed, I would of course be bound by that precedent.

- 2) Is there any reason why you could not, in good conscience, vote to uphold the death penalty, if the facts of the case warrant its imposition?

RESPONSE:

If the facts of the case warrant its imposition, there is no reason why I could not vote to uphold the death penalty.

HABEAS CORPUS

- 1) Do you agree there is a need for habeas corpus reform?

RESPONSE:

The Supreme Court has established limits of habeas corpus relief that I would follow if confirmed.

- 2) What are your thoughts on a proposal to abolish the requirement that persons convicted of capital crimes exhaust all available state remedies before petitioning in federal court for a writ of habeas corpus?

RESPONSE:

Convicted persons should be required to exhaust their state remedies before petitioning in federal court for a writ of habeas corpus.

- 3) What do you think of time limits requiring federal district and circuit courts to act on habeas petitions within a specified period of time?

RESPONSE:

Time limits requiring federal district and circuit courts to act on habeas petitions within a specified period of time could help in speeding up the finality of appeals and restoring public confidence in the judicial system. However, such time limits should not be so restrictive that they would prevent the courts from dealing with their ever increasing case loads in other civil and criminal cases and should assure the petitioner that he or she has had a fair review.

ROLE OF A FEDERAL JUDGE

What principles will guide you, or what methods will you employ, in deciding cases of first impressions?

RESPONSE:

If confirmed and faced with a question of first impression then once the question has been framed I would begin my reasoning process by examining existing sound legal principles. I would consider the briefs and legal arguments of both sides of the issue. I would look to see if the question had been decided by courts outside of my circuit and consider those opinions. I would look to see if there were cases that, even though not directly on point,

were very close to the question. If the question concerned a statute or act of Congress I would look to the plain wording of the statute and, if the meaning was not clear, to the Congressional record and committee notes to try and determine the intent of the lawmakers. I would then attempt to apply what existing precedent I had been able to find to the facts of the case before me when rendering a decision.

Are you committed to following all Supreme Court precedents faithfully and giving them full force, even if you personally disagree with some of them?

RESPONSE:

I am committed to following all Supreme Court precedents even if I personally disagree with some of them.

Under what circumstances do you believe a federal judge should refrain from consideration of a case which involves a political question?

RESPONSE:

A federal judge should always be neutral and nonpolitical in the application of the law and should not allow political considerations to influence his or her judgment. If the judge cannot do this in a particular case then the judge should recuse himself or herself.

Under what circumstances do you believe it is appropriate for a federal district judge to depart from the principle of "stare decisis"?

RESPONSE:

A federal district judge should be bound by Supreme Court and circuit court opinions and thus should not depart from the principle of "stare decisis".



CONSTITUTIONAL ISSUES

What is your view of Constitutional interpretation - do you think it should be strictly construed as the Founding Fathers wrote it or do you believe the interpretation of its provisions should change over time?

RESPONSE:

It is my view that the Constitution should not be changed by judges. The Constitution, to the maximum extent possible, should be literally and strictly construed by federal judges in accordance with Supreme Court precedent. Federal judges should interpret the law and not create law.

Do you feel the federal sentencing guidelines have been effective in the equitable administration of justice at the federal level?

RESPONSE:

Yes, the federal sentencing guidelines have been effective in the equitable administration of justice in federal court. The Sentencing Commission and the Congress will need to continue to monitor the guidelines and make adjustments where changes are necessary to maintain equitable sentences in federal court.

DATE: October 4, 1994

  
WILLIAM T. MOORE, JR.

**THE UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES**

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**

1. **FULL NAME: (include any former names used)**

Roslyn Elaine Olson Moore-Silver

2. **ADDRESS: List current place of residence and office address(es).**

RESIDENCE: 1645 East Orchid Lane, Phoenix, AZ 85020

OFFICE: U.S. Attorney's Office  
230 North First Avenue, #4000  
Phoenix, AZ 85025

3. **DATE AND PLACE OF BIRTH:**

2/28/46, Phoenix, Arizona

4. **MARITAL STATUS: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Married to Steven J. Silver  
Assistant Arizona Attorney General  
15 South 15th Avenue, 4th Floor  
Phoenix, AZ 85007

5. **EDUCATION: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.**

California Western University, 1964 - 1966;

University of 7 Seas, Fall of 1966;

University of California at Santa Barbara: Spring of 1967-1968

B.A., Political Science, graduated 1968;

Arizona State University College of Law: 1968-1971

J.D., graduated in 1971, cum laude, member and Comment Editor of the ASU Law Journal.

6. **EMPLOYMENT RECORD:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

ASSISTANT UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA, DEPARTMENT OF JUSTICE, (January 1980 to 1984 and 1986 to present; Chief of the Criminal Division since May 1989; Acting First Assistant, April to July 1993);

AMERICAN PARALEGAL INSTITUTE AND ARIZONA STATE UNIVERSITY, CENTER FOR EXECUTIVE DEVELOPMENT, (Between 1986 and 1990, Teacher and Professor);

ASSISTANT ARIZONA ATTORNEY GENERAL, (November 1984 - November 1986);

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, (July 1979 - January 1980, Trial Attorney);

LOGAN AND AGUIRRE, Law Firm (July 1978 - July 1979, Partner);

GREYHOUND CORPORATION ATTORNEY (now "The Dial Corporation), (July 1976- July 1978, In-House Labor Counsel);

NAVAJO NATION, EDUCATION DIVISION/NATIVE AMERICAN RIGHTS FUND, (July 1974 - July 1976, Advisor and Litigator);

DAUGHTON, FEINSTEIN AND WILSON, (September 1972 - April 1974, Associate);

LAW CLERK TO JUSTICE LORNA E. LOCKWOOD Supreme Court of Arizona, (September 1971 - September 1972);

MARICOPA COUNTY LEGAL AID, (now Community Legal Services) (July 1970 - September 1970, Legal Research Clerk);

DEPARTMENT OF INTERIOR, (June 1969 - September 1969, Library Research Clerk).

7. **MILITARY SERVICE:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

None

8. **HONORS AND AWARDS:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Nominated by the United States Attorney for Arizona and awarded by Attorney General Reno the Special Achievement Cash Award for outstanding service to the Department of Justice, 1993;

Selected by the Attorney General's Advisory Committee to serve and served on the Committee to explore and design effective policy for representation of Department of Justice Attorneys in litigation. The policies were adopted by Attorney General Reno and a video for training was created which includes an appearance by Attorney General Reno, 1993;

Selected by the Attorney General's Advisory Committee and served on the Committee to consider current ethical issues for Department of Justice employees, 1992-1993;

Selected as the Distinguished Public Lawyer by both the Maricopa County Bar Association and Arizona State Bar Public Lawyers Division, 1992;

Selected by the Attorney General of the United States as one of a few Assistant United States Attorneys nationally to receive for that year the Director's Award for Outstanding Achievements on behalf of the United States Department of Justice in particular in connection with a fraud prosecution. The award was published in the Congressional Record, 1991;

Received an award for Outstanding Public Service from the United States Attorney and the Arizona Department of Justice Law Enforcement Coordinating Committee for prosecution of a high profile case in Arizona of national significance, involving criminal acts of sabotage committed by eco-terrorists, 1991.

Nominated by the United States Inspector General, Department of Defense, for the Federal Law Enforcement Officers' Prosecutor of the Year Award, for work performed and prosecutions in connection with Department of Defense cases of national significance, 1990.

Received an award from the United States Inspector General, Department of Defense, for an outstanding contribution in prosecuting Department of Defense cases, 1989;

Received a Distinguished Service Award and Merit Cash Award, from United States Attorney for the District of Arizona, for successful investigation and prosecution of numerous fraud cases, 1987.

Received numerous awards and commendations by the Department of Justice, FBI, Drug Enforcement Administration, Forest Service, Defense Criminal Investigative Service, Bureau of Land Management, Department of Agriculture, Army Criminal Investigative Service for prosecution of various cases and for teaching at the Trial Advocacy Institute, 1981-1993;

Received an award from Big Sisters of Arizona for dedicated participation as a board member, 1984;

Received from the Chairman of the Navajo Nation, the Navajo Nation Award of Recognition for Outstanding Contribution to the Navajo Nation, 1976.

Awarded and received an academic scholarship to attend California Western University College, 1964-1965.

Awarded and received a dance scholarship to attend California Western University College, 1965-1966.

9. **Bar Associations:** List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

A. Bar Associations and Admissions

1. Arizona State Bar Association
2. Maricopa County Bar Association
3. Public Lawyers Division of the Maricopa County Bar Association - President  
1990
4. Public Lawyers Division of the Arizona State Bar
5. The Arizona Federal Bar Association
6. The Arizona Woman's Lawyers Association
7. American Bar Association



**B. Legal or judicial-related committees or conferences:**

**1. Present:**

Special Counsel for cases before the Arizona Judicial Conduct Commission, which resolves complaints filed against state court judges, 1994.

Master of the Lorna E. Lockwood, Inns of Court for Maricopa County, beginning 1993.

Arizona State Bar Ethics Committee, beginning 1990.

A.S.U. College of Law Judge for client relations, negotiations and Jencks Award Moot Court Competition, beginning 1986.

Board of Directors of the Arizona State Bar Public Lawyers Section and the Maricopa County Public Lawyers Division, beginning 1984.

Chairman, Subcommittee on the Professionalism for Public Lawyers and serve as an Instructor for the professionalism courses, beginning 1991.

Peer Review Committee State Bar, beginning 1992.

American Bar Foundation Victims' Bill of Rights Pro Bono Panel, beginning 1992.

Chairman of the Appointments Committee of the Arizona State and Maricopa County Public Lawyers Section, beginning 1992.

Instructor for the Department of Justice Office of Legal Education on the topics of ethics, discovery and grand jury - beginning in 1984.

A team leader for the Department of Justice's Evaluation and Review Audit Teams for United States Attorney's Offices, beginning August 1992.

American Bar Association, Criminal Justice and Litigation Sections, beginning 1980.

Arizona Woman Lawyers Association, Mentor Program Committee, beginning 1992.

Yearly participant in the Arizona State Bar Respect for Law Program Committee, involving presentations made to grammar school students, beginning 1978.

2. Past:

Advisory Board and member of the Board of Directors for the American Paralegal Institute, (1987 - 1993).

President of the Public Lawyers Section of the Maricopa County Bar Association (1990).

Arizona State Bar Committee on Disciplinary Matters, (1984 - 1991).

Commissioner Arizona Judicial Conduct Commission, appointed by the Governor, (1986-1990).

Law and Media Committee of the Maricopa Bar Association, (1986-1990).

Editorial Board of The Maricopa Lawyer, contributing monthly articles (law related and theater), (1986-1990).

Served on specially created committees of the United States Attorney General's Advisory Committee, on Ethical Issues and Liability, Immunity and Insurance for Prosecutors, (1991-1993).

Arizona Bar Faculty of the Arizona College of Trial Advocacy, (1986).

Arizona Women's Commission, appointed by the Governor of Arizona, (1977-1982).

10. **OTHER MEMBERSHIPS:** List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I do not belong to any organization which is active in lobbying before public bodies.  
I do not presently belong to other organizations.

11. **COURT ADMISSION:** List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of Arizona (10/5/71); United States District Court for the District of Arizona (10/15/73); United States Court of Appeals for the Ninth Circuit (12/29/80); Supreme Court of the United States (1984).

12. **PUBLISHED WRITINGS:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Laughter is Legal, The Arizona Attorney, (an Arizona State Bar publication) May 1991, attached.

Judge Tweed's Brief, "A Short Look at Territorial Justice," a play co-authored with Terry Earp, April 1989, attached.

Book Review, Presumed Innocent, by Scott Turow, The Arizona Attorney, (an Arizona State Bar publication), May 1990, attached.

Many contributions to the Maricopa County Bar Association publication, Maricopa Lawyer, in connection with paralegal studies, theater and arts and various criminal matters, 1986-1992. Some of them are listed as follows:

- A. Paralegals make inroads and contribute to profits;
- B. ASU, Phoenix College offer paralegal programs;
- C. Adding some magic to your career;
- D. Supreme court decisions labeled 'battle of words';
- E. Ninth Circuit judges gather for work, fun;
- F. Survey Reveals Public Lawyers' Views that Bar Programs are Irrelevant to Them.
- G. 'Judge Tweed's Briefs' aired on his front porch;
- H. Arts & Drama: The fast lane, power brokering and deal-making;
- I. Arts & Drama: Lawyers learn to improvise;

Crime Classification and its Effect in Constitutional Rights: An Analytical Approach, 1970, Arizona State University, Law Journal, 492.

13. **HEALTH:** What is the present state of your health? List the date of your last physical examination.

Excellent; Last complete physical January 1994. Physical July 1, 1994 to complete the application for this position.

14. **JUDICIAL OFFICE:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. **CITATIONS:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment

was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

This question is not applicable.

16. **PUBLIC OFFICE:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. **LEGAL CAREER:**

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk:

LAW CLERK TO JUSTICE LORNA E. LOCKWOOD Supreme Court of Arizona, (September 1971 - September 1972)

2. Whether you practiced alone, and if so, the addresses and dates:

No

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

ASSISTANT UNITED STATES ATTORNEY FOR THE DISTRICT OF ARIZONA, DEPARTMENT OF JUSTICE, (4000 United States Courthouse, 230 North First Avenue, Phoenix, AZ 85025); (January 1980 to 1984 and 1986 to present; Chief of the Criminal Division since May 1989; Acting First Assistant, April to July 1993);

AMERICAN PARALEGAL INSTITUTE (3443 North Central Avenue, Suite 1800, Phoenix, AZ 85012) and at ARIZONA STATE UNIVERSITY FOR THE CENTER OF EXECUTIVE DEVELOPMENT, (College of Business, Tempe, AZ 85287, Between 1986 and 1990, Teacher and Professor);

ASSISTANT ARIZONA ATTORNEY GENERAL, (State of Arizona Attorney General's Office, 1275 West Washington, Phoenix, AZ 85007), (November 1984 - November 1986);

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION, (4520 North Central Avenue, Phoenix, AZ 85012), (July 1979 - January 1980, Trial Attorney;

LOGAN AND AGUIRRE, Law Firm (Chamber of Commerce Building, 34 West Monroe, Phoenix, AZ 85003), (July 1978 - July 1979, Partner;

GREYHOUND CORPORATION ATTORNEY, (now "The Dial Corporation), (1850 North Central Avenue, Phoenix, AZ 85012); (July 1976-July 1978, In-House Labor Counsel;

NAVAJO NATION, EDUCATION DIVISION/NATIVE AMERICAN RIGHTS FUND, (P.O. Drawer 520, Window Rock, AZ 86515); (July 1974 - July 1976, Advisor and Litigator;

DAUGHTON, FEINSTEIN AND WILSON, (100 Washington, Suite 1840, Phoenix, AZ 85003); (September 1972 - April 1974, Associate;

LAW CLERK TO JUSTICE LORNA E. LOCKWOOD Supreme Court of Arizona, (1501 West Washington, Phoenix, AZ 85007); (September 1971 - September 1972;

MARICOPA COUNTY LEGAL AID, (now Community Legal Services), (305 South Second Avenue, P.O. Box 21538, Phoenix, AZ) (July 1970 - September 1970, Legal Research Clerk;

DEPARTMENT OF INTERIOR, (1849 C Street, NW, Suite 6151, Washington, D.C. 20240); (June 1969 - September 1969, Library Research Clerk.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1971-1972 - Clerk responsibilities.  
 1972-1974 - General civil litigation.  
 1974-1976 - Indian and education law.  
 1976-1980 - Labor and employment law  
 1980-Present - Primarily federal criminal law but including one year of federal civil law.

2. Describe your typical former clients, and mention the areas, if any, in which your have specialized?

A. Private Practice - Typically, my former clients were employees who had a variety of grievances against employers in the nature of alleged discrimination and improper disciplinary actions.



**B. Public Practice** - Typically, my public practice clients have been (1) the United States government and in particular a variety of agencies such as the Equal Employment Opportunity Commission, the Department of Justice encompassing the Federal Bureau of Investigation, the Drug Enforcement Administration, the Treasury Department including, without limitation, United States Customs and Secret Service, the Department of Interior including, without limitation, the Forest Service and the Bureau of Land Management, the Department of Agriculture, the Veterans Administration, the Department of Defense, the Office of Special Investigations for the Air Force, the Criminal Investigative Division for the Army, the Inspector General for Health and Human Services, (2) the State of Arizona and in particular the Supreme Court of Arizona and the Arizona Attorney General.

I have specialized in the litigation of employee arbitration matters, Indian law, Indian education law and criminal law.

- c. 1. **Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.**

1971-1972 - Not at all  
 1972-1974 - Occasionally  
 1974-1976 - Occasionally  
 1976-1980 - Frequently if arbitrations are included; which did not occur in court; occasionally if not.  
 1980-Present - Frequently

2. **What percentage of these appearances was in:**

(a) federal courts;  
 (b) state courts of records;  
 (c) other courts

1971-1972 - N/A  
 1972-1974 - State Courts 100%  
 1974-1976 - Federal Courts 70%; State Courts 30%  
 1976-1980 - State Courts 90%; Federal Courts 10%  
 1980- Present - Federal Courts 100%

3. **What percentage of your litigation was:**

(a) civil;  
 (b) criminal

1971-1972 - 50 percent each  
 1972-1974 - Civil 95%; Criminal 5%  
 1974-1976 - Civil 100%  
 1976-1980 - Civil 100%  
 1980-Present - Criminal 85%; Civil 15%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
    - (a) Between 1972 - April 1974 I tried four trials to verdict or judgment and I was sole counsel for all four.
    - (b) In October 1975, I tried the Chinle School District cases which resulted in a judgment and I was associate counsel
    - (c) Between 1980 to the present, I tried 21 cases to verdict or judgment. I served as associate counsel for seven of the trials; chief counsel for six and sole counsel for eight.)
  5. What percentage of these trials was:
    - (a) jury: 68%
    - (b) non-jury: 32%
18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
- (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) the individual name, addresses, and telephone number of co-counsel and of principal counsel for each of the parties.

1. United States v. Kenneth Richard Johnston

CITATIONS/DOCKET NUMBER: CR-93-008-PHX-RCB

SUMMARY: The defendant was a long time dangerous Warlord of the Dirty Dozen Outlaw Motorcycle gang who had very few convictions for many reasons. The defendant along with other members of the Dirty Dozen was charged by the State of Arizona Attorney General's Office in a drug conspiracy case. The Arizona Attorney General's Office was unsure if Johnston would flee or be convicted. I agreed in connection with the Attorney General's Triggerlock Program to charge him federally for all felon in possession and drug cases available. With the assistance of an Assistant United States Attorney and the local law enforcement agencies, we investigated his criminal conduct spanning four years and the grand jury indicted him for six federal offenses involving possession of firearms and selling drugs in connection with outlaw Dirty Dozen activities. Approximately, 20 motions were filed either by the government or

the defense counsel raising complex jurisdictional issues and reflecting the complications created by the murder of a witness. I handled the majority of the motions and, in particular, those with the most complex legal issues. I was also primarily responsible for most of the hearings on the motions which lasted a total of eight days. Finally, I prepared most of the pretrial motions, instructions, and a trial memorandum and participated with the United States Attorney and the Assistant United States Attorney in strategizing for trial. In April 1994, ten days before trial, a dramatic escape occurred from the jail in which defendant Johnston was housed and one of the escapees was a dangerous violent psychopath. Defendant Johnston had important information relating to the whereabouts of all of the escapees and I negotiated with defense counsel for a plea in exchange for the information. The government dismissed two of the six counts and allowed the defendant the possibility of additional cooperation with the United States and the Arizona Attorney General on charged and uncharged cases. The information provided by the defendant led to the apprehension of the psychopath and two other escapees. The defendant is presently cooperating and is still incarcerated.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Plea to four counts with a possible eight year sentence and potential cooperation with the United States and the Arizona Attorney General's Office on charged and uncharged offenses involving the outlaw Dirty Dozen gang.

**DATE OF REPRESENTATION:** July 1993 - to the present

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Judge Broomfield

**COUNSEL:** I was Chief Counsel and United States Attorney Janet Napolitano (602-514-7576) and Assistant United States Attorney Patrick J. Schneider (602-514-7547 assisted for the District of Arizona, 4000 United States Courthouse, 230 North First Avenue, Phoenix, AZ 85025.

**OPPOSING COUNSEL:** Stephen Hart, 702 East Osborn, Phoenix, AZ 85011, 602-274-7611

## 2. United States v. Mark Davis

**CITATIONS/DOCKET NUMBER:** CR-89-192-PHX-RCB

**SUMMARY:** This case involved a highly nationally publicized prosecution of defendants who sabotaged an Arizona ski resort, a uranium mine and conspired to sabotage nuclear facilities in California, Arizona and Colorado. The investigation which commenced in 1987 and ended in 1989, involved utilization of court ordered telephonic and residential intercepted conversations spanning six months, an undercover informant, and two undercover agents. I supervised

and provided advice to the Assistant United States Attorneys during the investigative stage. After indictment and two months before trial, the Assistants who were originally prepared to try the case left the office and I assumed chief responsibility for the trial which was expected to last six months. I prepared and supervised the preparation of motions and responses to approximately 50 motions. I was solely responsible for preparation of the instructions and trial memorandum. At trial, I was chief counsel, gave the opening statement and was responsible for most of the crucial government witnesses. After two and one half months of trial, all defense counsel approached me in an effort to reach a joint plea and resolution of the case. This was remarkable because before trial all counsel had uniformly refused to consider any form of disposition except complete dismissal. The defendants' steadfast attitude against any plea before trial was primarily because they considered their acts of "monkey wrenching" politically significant acts of civil disobedience for which they were willing to risk convictions and incarceration. Furthermore, they were strongly persuaded before trial that they would prevail. I was solely responsible for negotiating plea agreements with all counsel which required that all defendants plead guilty to felonies and all but one was required to serve time in prison. One of the defendants who was the spokesman for and recognized leader of EarthFirst! pled to the conspiracy count with a deferred sentencing for five years in which he was required to comply with many conditions. If he complies, his felony plea will be reduced at the end of the five years. This plea in particular was instrumental in shutting down EarthFirst! and substantially reducing illegal eco-sabotage because as the recognized leader he lost some credibility by pleading guilty. Previously, he publicly claimed on "60 Minutes" and in numerous published interviews that he had no involvement in the criminal acts.

**PARTY REPRESENTED:** United States government, Chief counsel

**DISPOSITION:** Pleas by all four defendants to felony counts with required jail time for three of them and a deferred sentence with the possibility of a reduced charge after five years on the fourth defendant.

**DATE OF REPRESENTATION:** November 1990-November 1991

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Judge Broomfield

**CO-COUNSEL:** Assistant United States Attorney Tom Simon, 4000 United States Courthouse, 230 North First Avenue, Phoenix, AZ 85025, 602-514-7610 and Department of Justice Attorney Daniel Fromstein, General Litigation and Legal Advice Section, Criminal Division, U.S. Department of Justice, Room 6100 Bond Building, 1400 New York Avenue, NW, Washington, D.C. 20005 202-514-1098

**OPPOSING COUNSEL:**

Wellborn Jack, Jr.  
101 Milam Street  
Shreveport, LA 71101 318-227-9637  
Attorney for Mark Davis

Gerry L. Spence  
P.O. Box 548  
Jackson, WY 83001 307-733-7290  
and  
Samuel Guiberson  
55 Waugh Drive, Suite 900  
Houston, TX 77007 713-861-3500  
Attorneys for Defendant Dave Foreman

Michael V. Black  
3101 North Central Avenue, Suite 530  
Phoenix, AZ 85012 602-265-7200  
Attorney for Defendant Peg Millett

Marc Budoff  
111 West Monroe, Suite 1212  
Phoenix, AZ 85003 602-253-9110  
Attorney for Defendant Ilse Asplund

Alfred S. Donau, III  
1430 East Fort Lowell Road, Suite 100  
Tucson, AZ 85719 602-795-8710  
Attorney for Defendant Marc Baker

3. United States v. Gwendolyn Joseph

**CITATIONS/DOCKET NUMBER:** CR-88-332-PHX-RCB

**SUMMARY:** The case involved a sophisticated multi-jurisdictional surety bonding fraud scheme beginning June of 1983 through November of 1984 in which the government and numerous subcontractors incurred over one and a half million dollars of losses. The scheme involved the submission of bids to the United States government and in some cases the award of contracts to contractors for the building of roads, or the repair of buildings and equipment



for the United States government. These contracts and projects were located in Arizona, California, Colorado, North Carolina and Virginia. The bids were supported by fraudulent payment and performance bonds pledged by fraudulent individual sureties. The individual sureties were either fictitious or had falsely inflated their assets. The defendants furnished these fraudulent surety bonds to the contractors for each government contract and were paid substantially by the contractors for this service. The victims of the scheme were the United States government whose losses were occasioned by defaults on the contracts causing excess reprocurement costs; the contractors who paid for the false bonds and the subcontractors who incurred significant losses because of the unavailability of recourse against the sureties. Many of the victim subcontractors were minorities who were economically devastated by the fraud. All of the defendants pled before trial and cooperated except for Gwendolyn Joseph who was convicted of 24 counts after a three month trial. I was solely responsible for providing advice during the investigation; all of the grand jury proceedings leading to the indictment, all of the post indictment motions, all negotiations for pleas, was chief counsel at trial and solely responsible for the appellate work. This case received national attention by Congressional committees and prompted the government to correct the government contract regulations relating to surety bonds. I received an award from the Department of Justice for the case which was published in the Congressional Record.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Guilty verdict

**DATE OF REPRESENTATION:** November 1988 - November 1989

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Judge Broomfield

**COUNSEL:** I was Chief Counsel and assisted by Department of Justice Attorney Steven Gillingham, 7316 Mallory Circle, Alexandria, VA, 703-922-4461.

**OPPOSING COUNSEL:**

Robert Ramsey  
727 West Seventh Street, #624  
Los Angeles, CA 90017 213-612-0020  
Attorney for Gwendolyn Joseph

Mike Scott  
1100 E. Washington, Suite 200  
Phoenix, AZ 85034-1045 602-252-2570  
Attorney for Wesley Plumber

Doug McVay  
 3550 N. Central, Suite 1701  
 Phoenix, AZ 85012-1141 602-264-2636  
 Attorney for Eddie Dixon

4. United States v. Intercon Electronics

**CITATIONS/DOCKET NUMBER:** CR-99-094-PHX-EHC

**SUMMARY:** The individual and corporate defendants provided counterfeit parts to McDonald Douglas Corporation destined for the Apache Attack Helicopter, which is a major weapons system for front-line-combat battlefield environments. In approximately 1986, Intercon Electronics in conjunction with Aero Electrical Connections Corporation, both California corporations, secured a contract with McDonald Douglas to furnish electrical connectors in accordance with federal regulations. The parts supplied, however, were not manufactured by government-qualified manufacturers but were counterfeit and defective parts. The plan to counterfeit the parts was initially conceived by defendant Martin Anthony Walk, the President and owner of Intercon Electronics, who persuaded others within his corporation to participate in the plan. When McDonald Douglas discovered the defective parts, a plan was designed by Walk and John Schnepf, President of Aero Electrical Connections Corporation, to present a false explanation to the United States Government and McDonald Douglas for the counterfeit parts. Walk directed a low level employee of his corporation to assume the entire responsibility and persuaded him to falsely communicate this explanation to the government agents. The employee later corrected his statements and he and the other employees associated with the crimes cooperated with the government. I was solely responsible for the grand jury investigation, which lead to indictment and the negotiation of the numerous pleas of guilty. The case had particular significance because a world-wide alert was issued by the Army to identify if any of the parts had been placed in aircraft and if so, they were ordered to be immediately removed because of safety concerns.

I received commendations and an award from the Department of Defense for the investigation and prosecution of this case.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Numerous pleas of guilty

**DATE OF REPRESENTATION:** 1986 - 1988

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Judge Earl Carroll

**COUNSEL:** I was Chief and sole Counsel

**OPPOSING COUNSEL:**

Kenneth Fields  
 now Maricopa County Superior Court Judge  
 201 W. Jefferson  
 Phoenix, AZ 85003-2205 602-506-2060  
 Attorney for Stephen Grob

Michael D. Hawkins  
 40 North Central, Suite 2500  
 Phoenix, AZ 85004 602-271-4400  
 Attorney for Geoffrey Booth

George M. Peters  
 2000 East Fourth Street, Suite 308  
 Santa Anna, CA 92705 714-835-0400  
 Attorney for Martin Anthony Walk

Patrick D. McNeal  
 2333 North Broadway, Suite 230  
 Santa Ana, CA 92706 714-972-8100  
 Attorney for John Schnepf

Robert L. Storrs  
 45 W. Jefferson, Suite 803  
 Phoenix, AZ 85003-2328 602-258-4545  
 Attorney for Rose Dawn

Robert L. Hess  
 MORGAN, LEWIS & BOCKIUS  
 801 S. Grand Avenue  
 Los Angeles, CA 90017 213-612-2500  
 Attorney for Aero Electrical Connectors Corporation

5. United States v. Dennis Ned Saban

**CITATIONS/DOCKET NUMBER:** CR-83-248-PHX-WPC

**SUMMARY:** This case involved a very sophisticated check kiting and commodity fraud scheme occurring in 1982 and 1983. The defendant with the assistance of others opened bank accounts in New York, Los Angeles, California, New Mexico and Phoenix which were closed after the discovery of the fraud because of non-sufficient fund activity. The principal defendant with the assistance of others also opened commodity accounts making false representations to the firms concerning payment of margins to properly fund the accounts. When the firms learned of the representations about false

accounts, they were closed causing the firms to suffer substantial losses. After a lengthy investigation the complicated interlocking deception of the banks and commodity firms was exposed and the defendants were indicted.

I was completely responsible for the grand jury investigation which lead to the indictment of all the defendants, preparation of responses to numerous motions, preparation for trial which was expected to last for six weeks.

After significant pre-trial litigation all the defendants plead one week before trial.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Pleas of guilty

**DATE OF REPRESENTATION:** 1981 - 1983

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable William P. Copple

**COUNSEL:** I was Chief Counsel and assisted by John Lyons, Assistant United States Attorney, 450 Golden Gate Avenue, Box 36055, San Francisco, CA 415-556-1126

**OPPOSING COUNSEL:**

Stephen M. Dichter  
2800 N. Central Avenue, 21st Floor  
Phoenix, AZ 85004 602-230-7000  
Attorney for Dennis Saban

Lawrence I. Kazan  
335 E. Palm Lane  
Phoenix, AZ 85004 602-257-8900  
Attorney for Marcia Saban

Stephen R. M. Rempe  
132 S. Central, Suite 6  
Phoenix, AZ 85004 602-506-3042  
Attorney for Robert Kelley

John J. Doherty  
1717 E. Bell, Suite 1  
Phoenix, AZ 85022 602-971-1775  
Attorney for Jeffrey Martin

6. United States v. Dennis Paul Thompson

**CITATIONS/DOCKET NUMBER:** CR-82-0100-PHX-CLH

**SUMMARY:** This case involved a multi-jurisdictional cocaine conspiracy in which I participated as co-counsel in a ten defendant trial in March of 1983. The conspiracy commenced in January of 1973 and continued until July of 1982 and included over 100 targets who possessed with the intent to distribute and used communication facilities to distribute cocaine. Large quantities of cocaine were obtained from Florida and California for redistribution in Arizona, Iowa and Kansas. After a lengthy investigation, over 100 defendants were indicted. Many of the defendants pled and three trials occurred. I provided advice and assistance to the attorneys trying the first two trials and I was co-counsel in the third trial. At the conclusion of approximately six weeks of trial, the jury returned a verdict of guilty against seven of the defendants; they could not reach a verdict on two of the defendants; and they acquitted one of them.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Guilty verdict

**DATE OF REPRESENTATION:** January 1984 - May 1984

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Charles L. Hardy

**COUNSEL:** I was Co-Counsel with Billy Rosen from the State Attorney Generals Office, 125 W. Washington, Phoenix, AZ 85007, telephone number 602-542-3881.

**OPPOSING COUNSEL:**

~~Gregory H. Martin  
Maricopa Court Superior Court Judge  
101 West Jefferson  
Phoenix, AZ 602-506-3441  
Attorney for Terrance Joseph Martin~~

Eleanor Miller  
1005 N. Second St.  
Phoenix, AZ 85004 602-257-8408

Morton Rivkid  
3014 N. Hayden, Suite 120  
Scottsdale, AZ 85251 602-423-9905



Robert B. Young  
623 N. Fourth St.  
Phoenix, AZ 85004 602-253-2856

7. Naaj v. United States

**CITATIONS/DOCKET NUMBER:** We cannot locate the docket number.

**SUMMARY:** This was a Federal Tort Claims Act case filed by a teacher at the Chinle Public School on the Navajo Indian Reservation as a result of an accident in which his vehicle collided with a horse. Mr. Naaj was rendered a quadriplegic as a result of the accident. The plaintiff's case against the government was based upon the fact that the fence abutting the highway was in a state of disrepair which allowed the livestock to run free on the road. After months of litigation, the matter was finally settled by a structured settlement. I was responsible for discovery including depositions and preparation of expert witnesses. I prepared for trial and then planned and orchestrated the structured settlement.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Structured settlement

**DATE OF REPRESENTATION:** January 1984 - July 1984

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Paul G. Rosenblatt

**COUNSEL:** I was Chief and sole Counsel

**OPPOSING COUNSEL:**

Samuel Langerman  
220 N. Central Avenue, Suite 1150  
Phoenix, AZ 85004 602-253-2545

8. United States v. Francis Skinner

**CITATIONS/DOCKET NUMBER:** CR-80-173-PHX-CLH/80-10386 (Ninth Circuit)

**SUMMARY:** This case involved the first degree murder of a teacher on the Navajo Indian Reservation and was the first conviction in the Prescott federal venue on First Degree Murder. The evidence establishing guilt was that the defendant had for a small amount of money brutally shot the victim in his trailer. The defense was that his admissions to the FBI were involuntary or he had been misunderstood. After a two and one-half week trial, the jury returned a guilty verdict. An interesting issue of first impression was resolved by the

Ninth Circuit i.e., whether once a suspect invokes his right to counsel government agents may never reapproach him. The Ninth Circuit held that where a person is not in continuous custody a reapproach by agents may occur. I was responsible for furnishing advice to the agents during the investigation, handling the grand jury investigation which lead to the indictment, preparation and trial of the matter to the jury, and all the appellate matters.

**PARTY REPRESENTED:** United States government

**DISPOSITION:** Guilty verdict

**DATE OF REPRESENTATION:** March 1980 - 1982

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Charles L. Hardy

**COUNSEL:** I was Chief and sole Counsel

**OPPOSING COUNSEL:**

Susan Wintermute  
2800 N. Central, Suite 2100  
Phoenix, AZ 85004 602-280-9330

9. Kerr McGee and Phelps Dodge v. Chinle School District

**CITATIONS/DOCKET NUMBER:** We are unable to locate the docket number.

**SUMMARY:** In approximately October 1975, three lawsuits were filed against the Chinle School District an Arizona public school district on the Navajo Indian Reservation by various industrial taxpayers located within the district. A hearing was held in federal district court to determine whether or not the taxes assessed against the industrial taxpayers were unconstitutionally confiscatory. Federal District Court Judge Craig ruled in favor of the taxpayers and we, the Native American Rights Fund, representing the Chinle School District appealed because in our view the existing law was that no court had ever held a tax, under the circumstances of this case, as unconstitutionally confiscatory. The matter was settled and the appeal was dismissed. My responsibilities were to respond to some motions, to prepare some of the witnesses for the hearing and present their testimony at the hearing and to argue a motion for reconsideration in the Arizona Superior Court.

The settlement allowed the school district to find a long term solution to some of the financial problems which precipitated the litigation.

**PARTY REPRESENTED:** The Chinle School District

**DISPOSITION:** The matter was settled. In exchange for our dismissal of the appeal, the taxpayers agreed to continue to pay the taxes owing but over an extended period of years.

**DATE OF REPRESENTATION:** 1985 - 1986

**NAME OF THE COURT AND JUDGE:** United States District Court for the District of Arizona before the Honorable Walter E. Craig

**COUNSEL:** I was Associate Counsel assisting Richard Collins with the Native American Rights Fund, now a Professor of Law in Boulder, Colorado, telephone number 303-492-5493.

**OPPOSING COUNSEL:**

Earl H. Carroll  
Now Federal District Court Judge  
230 North First Avenue, Rm. 6000  
Phoenix, AZ 85025 602-514-7235  
Attorney for Kerr McGee, one of the industrial taxpayers

Philip Von Ammon  
2 North Central Avenue, Suite 2200  
Phoenix, AZ 85004 602-257-5412  
Attorney for Phelps Dodge, one of the industrial taxpayers

10. Carl Weinstein v. Maricopa County Health Department and the Maricopa County Board of Supervisors

**CITATIONS/DOCKET NUMBER:** There is no docket number for the arbitration and we are unable to locate the docket number for the special actions filed in the Arizona Supreme Court.

**SUMMARY:** I initiated the matter, representing Mr. Weinstein, against the County for an unbonafide reduction in force which constituted an unlawful discharge. Mr. Weinstein was a very capable accountant for the Maricopa County Health Department before the Director of the Health Department initiated a reduction in force and eliminated his position. The matter was handled by arbitration pursuant to the County employee grievance system. The case received significant notoriety and publicity because of the Special Actions which I filed pursuant to the Arizona Open Meeting Law to obtain the tape recorded conversations of the Board of Supervisors effectuating the dismissal of Mr. Weinstein. After months of arbitration hearings and special action proceedings, the matter was settled and the County agreed to pay Mr. Weinstein a substantial severance pay.

**PARTY REPRESENTED:** Carl Weinstein

**DISPOSITION:** Settlement

**DATE OF REPRESENTATION:** 1978 - 1979

**NAME OF THE COURT AND JUDGE:** The arbitrator was David M. Quintieri, 8845 E. Gary Road, Scottsdale, 85260, 602-391-1485. The court before whom the special actions were filed was the Arizona Supreme Court

**COUNSEL:** I was Sole and Chief Counsel

**OPPOSING COUNSEL:**

Charles Herf  
One East Camelback, Suite 400  
Phoenix, AZ 85012 602-230-5500  
Attorney for Maricopa County Board of Supervisors and the Maricopa County Health Department

19. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. **The Investigation of the Taalawtumsi Hopi Idols**

The investigation and final resolution of the theft of the Taalawtumsi, regarded as the living deities essential for the most important Hopi religious ceremonies was clearly one of the most significant legal matters I pursued. These deities were stolen in approximately 1979 which precipitated an FBI investigation resolved in 1991. I worked closely with the FBI to follow all leads to determine who had stolen the idols but most importantly to attempt to recover and return them. The investigation led to a crushing disappointment when we learned that a man living in Oregon had destroyed them by burning them. Because the statute of limitation had run we worked with the Hopis and the perpetrator to persuade him to meet with the Tribe to allow them to obtain some reconciliation for the devastating loss. The meeting with the Tribe was painful. The religious leaders, insisted that the Taalawtumsi were not destroyed and they could still hear them crying. Many of the Hopi priests broke into tears. The Hopi leaders were very grateful that we had finally found the person who had destroyed the Taalawtumsis and had arranged for a meeting with the Tribe.

2. **Illicit damage and trade in artifacts cases.**

Between 1980 and 1984, I investigated, prosecuted and tried all of the archeological resource protection cases in the District of Arizona. My interest in this area was prompted by a recognition that the illegal artifact market in



Arizona was a multi-million dollar underground market of Native American religious pieces. In this endeavor, I was a liaison for a special investigation called Operation Stop which led to many convictions and successful efforts to penetrate the underground market. Nationally, I became recognized as an expert and taught at Law Enforcement Centers in Washington, Florida and Arizona.

### **3. Ethical Issues and Representation Issues for Prosecutors.**

In approximately 1990, I acquired an interest in ethical issues pertaining exclusively to prosecutors. As such, I was requested to participate on two committees created by the United States Attorney General's Advisory's Committee (a) to explore the possibility of drafting rules to regulate Department of Justice employees' ethical conduct; and (b) to develop policies and procedures to assist prosecutors in understanding potential liability in the wake of the Supreme Court decision of Burns v. Reed, 111 S. Ct. 1934 (1991). This interest in ethical issues for prosecutors has been expanded to participating on the Ethics Committee on the Arizona State Bar and numerous seminars conducted by the state and county bar associations.

### **4. Judicial Conduct Commission.**

Between 1986 and 1990, I participated on the judicial Conduct Commission, a Supreme Court of Arizona Commission that hears complaints filed against judges, and I was instrumental in drafting the amendments to the rules which now allow for public hearings after a formal charge is filed based upon a finding of probable cause. This effort although time consuming was extremely educational and challenging. It required that I become knowledgeable about the fierce controversy over whether these hearing should remain confidential.

### **5. Law Enforcement Coordinating.**

As the Chief of the Criminal Division since 1989, I have become involved in numerous projects such as Triggerlock and Weed and Seed which are community action law enforcement coordinating committees designed to seek and obtain public involvement in crime solving in communities.

### **6. Indian Gaming.**

As a result of the United States Attorneys decision to seize assorted illegal gaming devices, I became an expert on Indian gaming. I assisted in the hearing, titled United States of America v. Assorted Illegal Gambling Devices, CIV 92-0907-PHX-PGR which resulted in an amicable settlement with the Fort McDowell Indian Reservation and the eventual return of some of the gambling devices. I have spoken at numerous seminars and attended Department of Justice meetings on the subject and law relating to Indian gaming.



#### **7. Indian Education Law.**

In 1974-1975, while I worked on the Navajo Indian Reservation and for the Native American Rights Fund, I developed an expertise regarding the federal education law as applied to Native Americans. I mastered the scheme as it related to Arizona and discovered that the federal law violated the Equal Protection Clause as it applied to Native Americans. This discovery precipitated the initiation of a lawsuit filed by the Native American Rights Fund in Washington resulting in a decision declaring the law unconstitutional as it applied to Native Americans.

#### **8. Teacher of Paralegal Studies.**

Between 1986 and 1990, I was a teacher and professor for the American Paralegal Institute and at Arizona State University for the Center for Executive Development. This gave me a significant appreciation for the great potential resource of paralegals in the legal profession and allowed me to make a positive impact on the lives of students who wanted a career in the law without becoming a lawyer.

#### **9. Labor Relations Cases.**

I handled numerous labor relations cases at the Greyhound Corporation now Dial Corporation which thoroughly exposed me to litigation enough to persuade me that I enjoyed it. With the assistance of the Chief, Labor Counsel for Dial Corporation, Leon Reivitz, I developed an expertise and knowledge of labor arbitration issues and cases.

#### **10. Corruption cases.**

As the Chief of the Criminal Division since 1989, I have been responsible for investigating numerous allegations of corruption by public officials in both federal and state government. The complexity of managing these cases is immense. I have learned to be acutely sensitive to maintaining the confidentiality of the investigations to avoid unwarranted besmirching of the reputations of persons being investigated while vigorously and aggressively investigating the allegations of impropriety.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no anticipated benefits from previous business relationships but my federal government retirement plan and my husband's retirement plan have a present value as follows:

Husband's Deferred Compensation (3/31/94) - \$35,620.47  
 My Deferred Thrift Savings - \$103,500.00  
 Husband's Contribution to Retirement - \$25,000.00  
 My Federal Retirement (Inchoate) - Value?

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

- a. How will I resolve any potential conflict of interest?

First, I will not be assigned any matter originating from this office, the United States Attorney's Office for the District of Arizona, for six months.

Second, I will not be assigned any matter which was within this office in any respect while I was an employee in the office.

Third, I will recuse myself from any matter in which my husband or I have any material financial connection.

Fourth, I will recuse myself from any matter in which my husband or I have any material personal connection or interest.

Finally, I will adhere to Canons of Ethics for the Judiciary, the applicable regulations for the judiciary, the Code of Conduct for lawyers.

- b. Matters and cases in which the United States government, represented by the Department of Justice and United States Attorney's Office is a party may present potential conflicts of interest.

3. **Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.**

I have no such plans

4. **List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)**

Please refer to the attached Financial Disclosure Report.

5. **Please complete the attached financial net worth statement in detail (Add schedules as called for).**

See attached

6. **Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.**

In 1972, I assisted Jack E. Brown in his Arizona campaign for Congress by hosting and attending coffees held on his behalf.

## III. GENERAL (PUBLIC)

1. **An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.**

Presently, I serve on the American Bar Foundation Victims' Bill of Rights Pro Bono Panel Committee.

As a member of the Public Lawyers Division of the Maricopa County Bar Association for the past five years, I have actively participated in our annual program entitled "Tennies, Tees and Toys" where we gather used clothing, toys and other items for children in the projects in Phoenix.

Also as a member of the Public Lawyers Division of the Maricopa County Bar Association, I have painted homes for disadvantaged families.

In 1989, I assisted with the celebration of the opening of the Neighborhood Housing Services Office by co-authoring a play. The proceeds from the event were used to further the work of the Neighborhood Housing Services' goals to revitalize the surrounding neighborhood.

2. **The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What have you done to try to change these policies?**

I do not belong and have never belonged to any organization which discriminates.

3. **Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).**

There was no selection commission in my jurisdiction.

I learned of the opening on the bench in early June of 1994. I was encouraged by various Arizona federal district court judges to submit my name for consideration for the position because it was their understanding that the Senator was interested in appointing a qualified woman. I learned from the Office of Senator DeConcini that the appropriate method of applying was to send a letter expressing an interest. On June 13, 1994, I sent a short letter asking that I be considered for the position.

It is my understanding that the Senator consulted with a large number of judges, prosecutors and attorneys in Arizona before making the decision. I was called by Senator Dennis DeConcini on June 22, 1994 and informed that he was recommending me for appointment for the judicial position. Subsequently, I responded to questionnaires and was interviewed by representatives from the Department of Justice, the Federal Bureau of Investigation and the American Bar Association.

4. **Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.**

No one has in any manner discussed a material case, legal issue or question.

5. **Please discuss your views on the following criticism involving "judicial activism."**

**The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.**

**Some of the characteristics of this "judicial activism" have been said to include:**

- a. **A tendency by the judiciary toward problem-solution rather than grievance-resolution;**
- b. **A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;**
- c. **A tendency by the judiciary to impose broad, affirmative duties upon governments and society;**
- d. **A tendency by judiciary toward loosening jurisdictional requirements such as standing and ripeness; and**
- e. **A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.**

A federal district judge is constitutionally limited to hearing cases and controversies which by their nature require an actual dispute ripe for resolution involving either federal statutes or the Constitution. This principle mandates a constant examination of Article III standing requirements to ensure that judicial power is not invoked in order to obtain advisory opinions, or extend relief beyond that warranted by the parties claims.



A federal judge must also not shrink from performing her judicial duties of protecting the Constitutional rights of the citizens of this country. Governmental action that is constitutionally proscribed, however, must be remedied but that remedy must always be the least intrusive to preserve the Constitutional and historical separation between co-equal branches of government.

The judiciary should not by decision seek to intrude into the operating of governmental programs that are the rightful province of the executive branch but as demonstrated by the school desegregation cases the judiciary is at times left with no alternative but to invade those governmental operations in order to protect constitutionality guaranteed rights of individuals.

The conflict between respect for separation of powers and protection of liberties is one of the most challenging issues of a federal court judge. A judge must consistently do comprehensive research of the appropriate circuit and Supreme Court precedents to guide her in performing these responsibilities in accordance with the Constitution.

## FINANCIAL STATEMENTS

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	8 204 00	Notes payable to banks—secured	1 931 00
U.S. Government securities—add schedule	34 269 00	Notes payable to banks—unsecured	-0-
Listed securities—add schedule	53 360 00	Notes payable to relatives	5 000 00
Unlisted securities—add schedule	-0-	Notes payable to others	-0-
Accounts and notes receivable:	-0-	Accounts and bills due	-0-
Due from relatives and friends	-0-	Unpaid income tax	-0-
Due from others	-0-	Other unpaid tax and interest	-0-
Doubtful	-0-	Real estate mortgages payable—add schedule	184 644 25
Real estate owned—add schedule	240 700 00	Chattel mortgages and other liens payable	-0-
Real estate mortgages receivable	-0-	Other debts—itemize:	-0-
<del>Auto and other personal property</del>	11 500 00		
Cash value—life insurance	-0-		
Other assets—itemize:			
Direct Investments	20 112 00		
SCA Tax-Exempt LP	N/A		
Jewelry & Home Furnishings	20 000 00	Total Liabilities	191 575 25
Other Assets (See Schedule)	16 530 47	Net Worth	342 100 22
Total Assets	553 675 47	Total Liabilities and net worth	533 675 47
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	-0-	Are any assets pledged? (Add schedule.)	NO
On leases or contracts	-0-	Are you defendant in any suits or legal actions?	NO
Legal Claims	-0-	Have you ever taken bankruptcy?	NO
Provision for Federal Income Tax	-0-		
Other special debt	-0-		

## SCHEDULE ATTACHMENT

1. OTHER ASSETS (Continued)

Husband Deferred Comp - (3/31/94) -	\$35,630.47
Roslyn's Deferred Thrift Savings -	\$103,500.00
Roslyn's Thrift Savings Account -	\$1,400.00
Husband's Contribution to Retirement -	\$25,000.00
Roslyn's Federal Retirement (Inchoate) -	Value?

2. NOTES PAYABLE TO BANKS - SECURED

\$1,931.00 Owed to Bank One and secured by second deed of trust on home.

3. NOTES PAYABLE TO RELATIVES

Husband signed a note with siblings payable to his mother's estate if her guardian makes demand for payment or return of distributed property to allow for his mother's long term care.



Correspondence Address:  
Norwest Mortgage, Inc.  
Customer Service Department  
1021 Southeast Tenth Avenue  
Minneapolis, MN 55479-2584  
(800) 866-2441 or (612) 623-7503  
TDD # (800) 285-7505 Hearing Impaired

## MORTGAGE STATEMENT

Statement Date: 06/13/94  
Loan Number: 1211001  
Interest Rate: 7.825%

NEXT PAYMENT DUE DATE: 07/01/94

Current Payment: 07/01/94 \$2,043.48  
Past Due Payment(s) \$ .00  
Unpaid Late Charges \$ .00  
Other Charges  
TOTAL AMOUNT DUE \$2,043.48

STEVEN JEFFREY SILVER  
ROSLYN MOORE-SILVER  
1645 E ORCHID LN  
PHOENIX AZ 85020-3310

|||||

### Property Address:

1645 E ORCHID LN  
PHOENIX AZ 85020

### Activity Since Your Last Statement

Date	Description	Principal	Interest	Escrow	Late Charge	Other	Total
06/13	PAYMENT THRU YOU	\$816.32	\$1,177.21	\$249.95			\$2,043.48

For Additional Information, See Reverse Side.

Principal Balance As of 06/13/94	Interest Paid Year to Date	Escrow Balance As of 06/13/94	Taxes Paid Year to Date
\$184,649.25	\$7,122.40	\$880.87	\$1,113.15

### Important Messages

Summertime - backyard barbecues, beach parties, and country fairs - a great time to be free of hassles. That's why we at Norwest provide timely, complete information about your mortgage account each month. However, since we recognize you may have additional questions about your account, we have a solution: just call our Customer Service Department.



Please include This Portion With Your Payment.

LOAN NUMBER: 1211001

STEVEN JEFFREY SILVER  
ROSLYN MOORE-SILVER  
1645 E ORCHID LN  
PHOENIX AZ 85020-3310

NORWEST MORTGAGE, INC.  
PAYMENT PROCESSING CENTER  
P.O. BOX 8270  
DES MOINES, IA 50306-8270

|||||

## PAYMENT COUPON

Next Payment Due Date: 07/01/94  
Current Payment: \$ 2,043.48  
Past Due Payment(s): \$  
Unpaid Late Charges: \$  
Other Charges: \$  
TOTAL AMOUNT DUE: \$ 2,043.48

For Customer Use

Additional Principal	\$	
Additional Escrow	\$	
TOTAL ENCLOSED	\$	

Payment Amount Due  
After 07/15/94: \$2,133.18  
(Includes Late Charge)

211001 000204346 08968 0002133184



**Merrill Lynch,  
Pierce, Fenner & Smith Inc.**  
Member, Securities Investor Protection Corporation (SIPC)

# Statement of Retirement Account

MUPFA 8 CUST PPO  
ROSLYN MOORE IRA

***** YOUR INVESTMENTS *****			
INVESTMENTS IN YOUR ACCOUNT		CURRENT PRICE	MARKET CURR. EST. VALUE YIELD INCOME
17000	CATS PRIM SERIES U ZEROA AUG 15 2004	47.314	90043
TOTAL MARKET VALUE OF PRICED INVESTMENTS			631595 8545
MONEY ACCT POSITIONS @ \$1.00 PER SHARE	OPENING BALANCE AS OF 05/18	CLOSING BALANCE AS OF 06/24	DIVIDENDS/INTEREST THIS PERIOD YEAR TO DATE
ML RETIREMENT RESERVES	8.04	8.04	8.00 8.76

## \*\*\*\*IMPORTANT TAX REPORTING INFORMATION\*\*\*\*

YOUR DATE OF BIRTH AND SOCIAL SECURITY NUMBER ARE VITAL PIECES OF INFORMATION REQUIRED TO ENSURE THAT THE GOVERNMENT WITHHOLDING DONE ON YOUR ACCOUNT IS ACCURATE. PLEASE VERIFY THE INFORMATION BELOW AND CONTACT YOUR FINANCIAL CONSULTANT IF ANY CHANGE IS NECESSARY. THANK YOU.

DATE OF BIRTH: FEBRUARY 28, 1946

SOCIAL SECURITY NUMBER:

PUT YOUR RETIREMENT SAVINGS AND INVESTMENTS TO WORK THIS SUMMER! CONSOLIDATE YOUR ASSETS AT MERRILL LYNCH. SEE THE ENCLOSED INSERT FOR DETAILS.

END OF STATEMENT

000015 - 000001175

JUNE, 1994  
3002 412 92E23



## Retirement Portfolio

	Investment Description	Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annual Income
EQUITIES	**BAXTER INTERNL INC	BAX	19	24.750	\$470	4.04	6
	**CAREMARK INTL INC	CK	4	18.875	\$75		
	**CHIRON CORP DEL	CHIR	5	56.125	\$280		
	**GENENTECH INC RED COM	ONE	20	50.125	\$1,002		

CONTINUED ON NEXT PAGE

0000

IRRA CONTINUED

IRRA®

STEVEN J SILVER IRA  
FBO STEVEN J SILVER

## Retirement Portfolio/Continued

	Investment Description	Equity Symbol	Quantity	Estimated Current Price	Estimated Current Market Value	Estimated Current Yield %	Estimated Annual Income
EQUITIES	**INTL BUSINESS MACH	IBM	100	59.875	\$5,987	1.67	\$100
	K HART CORP	KH	44	15.875	\$698	6.04	\$42
	PINNACLE WEST CAP CORP	PW	16	16.250	\$260	4.92	\$13
	PLH INCOME REALTY		5	850.000	\$4,190		
	PARTNERSHIP VI LP 86						
	ML LEE ACQUISITION		5	1408.000	\$7,040		
	RETIREMENT FUND II LP 89						
	SUBTOTAL				\$80,002		\$174
MUTUAL FUNDS & UNIT INVEST TRUSTS	EQUITY INCOME FUND		2926.5516	.920	\$2,756	4.16	\$115
	SELECT TEN 1994 WINTER						
	DEFINED ASSET FUNDS						
	MERRILL LYNCH HEALTHCARE		1.8580	3.350	\$6	.30	
	FUND INC CLASS A						
	MERRILL LYNCH TECHNOLOGY		2.6450	5.300	\$14		
	FUND, INC CLASS A						
	MERRILL LYNCH GLOBAL		1124.6410	13.070	\$14,699	3.50	\$514
	ALLOCATION FD CLASS B						
	MERRILL LYNCH SHORT TERM		10.2060	8.210	\$83	9.55	\$5
	GLOBAL INCOME FUND CL B		195.9650	12.190	\$2,388	2.60	\$69
	SUBTOTAL				\$26,407		\$1,175
CORPORATE & GOVT SECURITIES	COMMON TREASURY RECEIPT INT PYMT ON 13.750% 2004 ZERO% FEB 13 2003		13200	93.614	\$7,077		

CONTINUED ON NEXT PAGE

0000

IRRA CONTINUED

IRRA®



Merrill Lynch,  
Pierce, Fenner & Smith Inc.  
Member, Securities Investor Protection Corporation (SIPC)

Statement of  
Individual Investor

ROSLYN E MOORE-SILVER TTEE  
U/A BTD 05/30/89

YOUR INVESTMENTS				CURRENT PRICE	MARKET VALUE	CURR. YIELD	EST. INCOME
120	**AT&T CORP	COM		53.750	66600	2.45	8169
200	**AMERITECH CORP NEW	COM		39.000	60112	4.92	8399
192	**BELL ATLANTIC CORP			54.900	87194	5.06	8364
224	**DUKE POWER CO			35.125	87868	5.35	8421
100	ROYAL BANK OF SCOTLAND			24.500	82450	6.24	8202
	PFD 9.50% SER C NON CUM						
	SPONSORED ADR REPSTG						
1425	**UPJOHN CO DEL PV 1			29.750	842393	4.97	82107
1327	COLONIAL TAX EXEMPT			13.090	817370	6.05	81051
	FUND CLASS A						
811.6500	AIM VALUE FUND			20.010	810230	.16	874
2912	FRANKLIN ARIZONA TAX			11.140	832439	5.70	81049
	FREE INCOME FUND						
706.2016	PUTNAM ARIZONA TAX			6.830	86942	5.00	8400
	EXEMPT FUND 801						
25000	U.S. TREASURY NOTE			104.016	826004	7.69	82000
	06.000% JAN 15 1997						
25000	U.S. TREASURY NOTE			101.437	825359	7.92	81700
	07.125% OCT 15 1990						
54000	U.S. TREASURY NOTE			108.234	854117	8.19	84432
	8.875% FEB 15 1999						
10000	U.S. TREASURY NOTE			102.297	810229	7.33	8750
	07.500% NOV 15 2001						
10000	MARICOPA CO AZ SD NO 11			64.719	86471		
	PEORIA UNI 7%CI REF 131A						
	AUG91: 00.000%JUL01 02						
5000	PHOENIX AZ STR-HWY USER			101.426	85071	5.91	8300
	REV JR LIEN A RFDO FOIC						
	DEC92 06.000%JUL01 08						
TOTAL MARKET VALUE OF PRICED INVESTMENTS					8269137		816268

YOUR INDIVIDUAL INVESTOR ACCOUNT CAN BE EVEN MORE POWERFUL WHEN PART OF AN  
OVERALL PLAN FOR REACHING YOUR FINANCIAL GOALS. SEE NEWSLETTER FOR DETAILS.

## FINANCIAL STATEMENT

## NET WORTH

Trust

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	689	Notes payable to banks—secured	
U.S. Government securities—add schedule	115,204	Notes payable to banks—unsecured	
Listed securities—add schedule	152,556	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	
Real estate owned—add schedule		Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property			
Cash value—life insurance			
Other assets—itemize:			
		Total liabilities	
		Net Worth	
Total Assets		Total liabilities and net worth	
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add sched. etc.)	
On leases or contracts		Are you defendant in any suits or legal actions?	
Legal Claims		Have you ever taken bankruptcy?	
Provision for Federal Income Tax			
Other special debt			

## FINANCIAL STATEMENT

## NET WORTH

ST/WIRAS

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	8204	Notes payable to banks—secured	
U.S. Government securities—add schedule	34269	Notes payable to banks—unsecured	
Listed securities—add schedule	53360	Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule	
Real estate owned—add schedule		Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property			
Cash value—life insurance			
Other assets—itemize:			
Direct Investments (L.P.)	20112		
SCA Tax-exempt L.P.	N/A		
		Total liabilities	
		Net Worth	
Total Assets		Total liabilities and net worth	
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor		Are any assets pledged? (Add schedule)	
On leases or contracts		Are you defendant in any suits or legal actions?	
Legal Claims		Have you ever taken bankruptcy?	
Provision for Federal Income Tax			
Other special debt			

)

**AFFIDAVIT**

to the best of my knowledge, true and accurate.

9/14/94  
(DATE)

(NAME) John O. Howe - Sri

Subscribed and sworn to before me this 14 day of September, 1994, by Roslyn Moore-Silver.

Viriana M. Martinez  
NOTARY PUBLIC

**My Commission Expires May 17, 1996**



Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

# FINANCIAL DISCLOSURE REPORT

AO-10  
Rev. 1/93

1. Person Reporting (Last name, first, middle initial)  Moore-Silver, Roslyn O.	2. Court or Organization  Federal District Court for the District of Arizona	3. Date of Report  9/14/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  Active Article III Judge	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>9/14/94</u> ___ Initial ___ Annual ___ Final	6. Reporting Period
7. Chambers or Office Address  United States Courthouse 230 North First Avenue Phoenix, AZ 85025	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

IMPORTANT NOTES: *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Lecturer Scottsdale University School of Law

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1	<u>1/93-3/93</u>	<u>Scottsdale University School of Law-Compensation</u>	<u>\$ 1,200.00</u>
2	<u>1/93-9/94</u>	<u>Arizona Attorney General's Office -</u>	
3		<u>Salary (\$)</u>	<u>\$</u>
4			<u>\$</u>
5			<u>\$</u>
			<u>\$</u>

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Moore-Silver, Roslyn O.

Date of Report

9/14/94

**IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

Not applicable

2

3

4

5

6

7

8

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

Not applicable

2

\$

3

\$

4

\$

\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

✓

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Moore-Silver, Roslyn O.

Date of Report

9/14/94

## VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asst. Code (A-S)	Type (Div., Int., or Inst.)	Value Code (J-P)	Value Method Code (Q-W)	(1) Type (e.g., Div., Int., or Inst.)	(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-S)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
<sup>1</sup> Salt River Project Bond (J)	A	Int.	J	U					
<sup>2</sup> SCA Tax Exempt LP (J)	A	Int./Div.	J	U					
<sup>3</sup> ML Futures Invest. LP (J)	A	Int./Div.	J	U					
<sup>4</sup> ML Global Allocation (J)	A	Div.	J	U					
<sup>5</sup> CATS 03 8/15/04	A	Int.	J	U					
<sup>6</sup> Coupon Treasury Receipt 2/15/03	A	Int.	J	U					
<sup>7</sup> U.S. Treasury Note 8/15/04	A	Int.	J	U					
<sup>8</sup> Equity Inc. Fund How Ten	A	Div.	J	U					
<sup>9</sup> ML Eurofund	A	Div.	J	U					
<sup>10</sup> ML Global Holdings FD	A	Div.	J	U					
<sup>11</sup> ML Global Allocation ED	A	Div.	J	U					
<sup>12</sup> Coupon Treasury Receipt 8/13/03 (S)	A	Int.	J	U					
<sup>13</sup> Coupon Treasury Receipt 2/15/03 (S)	A	Int.	J	U					
<sup>14</sup> Coupon Treasury Receipt 2/15/04 (S)	A	Int.	J	U					
<sup>15</sup> Baxter International 'Common' (S)	A	Div.	J	U					
<sup>16</sup> Caremark International 'Common' (S)	A	Div.	J	U					
<sup>17</sup> Chiron Corp. 'Common' (S)			J	U					
<sup>18</sup> Genentech 'Common' (S)			J	U					
<sup>19</sup> IBM 'Common' (S)	A	Div.	J	U					
<sup>20</sup> K-Mart 'Common' (S)	A	Div.	J	U					

1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & D4)	B=\$1,001 to \$2,500	C=\$2,501 to 5,000	D=\$5,001 to \$15,000
2 Value Codes: J=\$15,001 to \$50,000	P=\$50,001 to \$100,000	Q=\$100,001 to \$1,000,000	R=More than \$1,000,000
(See Col. C1 & D3)	K=\$15,001 to \$50,000	L=\$50,001 to \$100,000	M=\$100,001 to \$250,000
3 Value Method Codes: Q=Appraisal	R=\$250,001 to \$500,000	S=\$500,001 to \$1,000,000	T=More than \$1,000,000
(See Col. C2)	U=Book Value	V=Cost (real estate only)	W=Assessment
		X=Other	Y=Estimated
			Z=Cash/Market



Name of Person Reporting	Date of Report
Moore-Silver, Roslyn O.	9/14/94

A. Description of Assets (Including trust assets)	B. Increase during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
					(1) Type (e.g., buy, sell, transfer, redemption)	(2) Date: Month- Day	(3) Value: Code (J-P)	(4) Gain: Code (A-W)	(5) Identity of buyer/seller (if private transaction)
Place "X" after each asset except from prior disclosures.	Int. Code (A-W)	Type (e.g., div., rent or loan)	Value: Code (J-P)	Value Method: Code (Q-W)					
NONE (No reportable income, assets, or transactions)									
1 U.S. Treasury Note 8-7/8 2/15/99	C	Int.	L	U					
2 U.S. Treasury Note 8 1/15/97	B	Int.	K	U					
3 U.S. Treasury Note 7-1/8 10/15/98	B	Int.	K	U					
4 U.S. Treasury Note 7-1/2 11/15/01	A	Int.	J	U					
5 Maricopa County AZ Bond	A	Int.	J	U					
6 Phoenix AZ Bond	A	Int.	J	U					
7 AT&T 'Common'	A	Div.	J	U					
8 Ameritech 'Common'	A	Div.	J	U					
9 Bell Atlantic 'Common'	A	Div.	J	U					
10 Duke Power 'Common'	A	Div.	J	U					
11 Royal Bk. of Scotland 9-1/2 PFR	A	Div.	J	U					
12 Unijohn 'Common'	B	Div.	L	U					
13 Colonial Tax Exempt FD	A	Div.	K	U					
14 AIM Value FD	A	Div.	J	U					
15 Franklin AZ Tax Free FD	B	Div.	K	U					
16 Putnam AZ Tax Exempt FD	A	Div.	J	U					
17 ML Ready Asset Trust	A	Int.	J	U					
18									
19									
20									
1 Income/Gain Codes: (See Col. B1 & B4)	A=\$1,000 or less B=\$15,001 to \$50,000 C=\$15,001 to \$50,000 (See Col. C1 & D3)	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 X=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000	C=\$2,501 to 5,000 D=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000 P=More than \$1,000,000	D=\$5,001 to \$15,000 E=More than \$1,000,000 M=\$100,001 to \$250,000					
2 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	S=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market					



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Moore-Silver, Roslyn O.

Date of Report

9/14/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

---



---



---



---



---



---



---



---



---



---

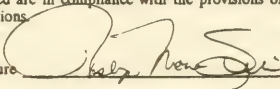
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date 9/14/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

**RESPONSES OF ROSLYN SILVER TO  
QUESTIONS FOR FEDERAL DISTRICT JUDGE NOMINEES --  
HELEN GILLMORE, DAVID KATZ, SEAN McLAUGHLIN, WILLIAM MOORE,  
ROSLYN SILVER AND ALVIN THOMPSON**

**QUESTIONS FROM SENATOR PRESSLER**

In answering the following questions, please be thorough and expansive.

**EXCLUSIONARY RULE**

I believe there are a number of problems with the "exclusionary rule" as it is currently applied: (1) it is ineffective; (2) it imposes excessive costs on the criminal justice system and society by freeing the guilty, while not helping the innocent; and (3) the penalty of completely excluding otherwise proper and relevant evidence bears no proportion to the abuse it seeks to prevent -- the penalty is the same regardless of whether a police officer's improper conduct is unintentional or not, whether it is minor or flagrant.

In 1984, the Supreme Court modified the exclusionary rule in United States v. Leon to permit the introduction of evidence obtained in reasonable good faith reliance on a search warrant that later proved defective. Also, the 5th and 11th Circuits have adopted a good faith exception for warrantless searches.

- 1) **What are your views on the issues? Do you take an expansive or restrictive view of the Federal exclusionary rule? Do you favor a broader "good faith" exception to the rule than current law allows?**

The exclusionary rule is designed to deter the illegal and improper interference with constitutionally protected rights, but it has on occasion interfered with effective law enforcement and the protection of the public against dangerous criminals. I am quite familiar with the Leon decision and have relied upon it and its progeny as a federal government prosecutor. I will follow the precedents of the Supreme Court and my Circuit on these evolving issues and, in particular, if the Ninth Circuit adopts a good faith exception for warrantless searches I am committed to and will follow that law.

- 2) **What do you think of a proposal made last Congress which would have overturned Leon and the 5th Circuit exception by modifying the exclusionary rule so as to admit evidence obtained with a defective warrant only if the officers requesting the warrant and the issuing magistrate can be proven to be "detached and neutral"?**

If Congress enacts such a law and its propriety and constitutionality are upheld by the Supreme Court and my circuit court, I am committed to and will enforce the law.

### DEATH PENALTY

The Congress has recently passed legislation that provides for the imposition of the death penalty for a number of federal capital offenses.

- 1) Do you feel the death penalty constitutes one of the "cruel and unusual punishments" proscribed by the Eighth Amendment?

The Supreme Court of the United States has clearly held that the death penalty does not constitute one of the "cruel and unusual punishments" proscribed by the Eighth Amendment. I am committed to and will comply with the Supreme Court of the United States decisions and my Circuit court decisions on this issue.

- 2) Is there any reason why you could not, in good conscience, vote to uphold the death penalty, if the facts of the case warrant its imposition?

There is no reason why I could not, in good conscience, vote to uphold the death penalty, if the facts of the case warrant its imposition.

### HABEAS CORPUS

Each year, thousands and thousands of petitions of habeas corpus are filed clogging the federal district court dockets. For example, in 1992 inmates filed a total of 49,939 civil suits, including habeas petitions, against the government in federal court. The same year, a total of 48,538 criminal cases were brought by the government in federal courts. This means that, in 1992, inmates filed 1,401 more cases against the government than the government brought against wrongdoers.

Most habeas petitions are totally without merit. Prisoners seem to file them as a form of occupational therapy. Other prisoners, such as those on "death row", file successive petitions simply to delay the imposition of their sentence. 40% of all habeas petitions are filed more than five years after the petitioner was convicted. Almost one-third of all petitions are filed more than a decade after conviction.

The lack of finality in our criminal justice system imposes high costs -- both economic and societal -- on all of us. Public confidence in the system has been seriously undermined as a result. Victims and their families are unable to put their lives back together as litigation drags on and on. The resources of the federal courts and prosecutors are strained to the breaking point.

**1) Do you agree there is a need for habeas corpus reform?**

There is a clear need for finality of judgments in the criminal system. The large numbers of petitions which have been and are being filed in the system each year is crippling the courts, particularly where a number of these petitions are frivolous in nature. But on the other hand, these petitions are often filed by illiterate, uneducated litigants. In one of these such petitions, the petitioner may have raised, perhaps inarticulately, a legitimate and true constitutional claim worthy of consideration by the federal courts. Hence, there may be a need for habeas corpus reform but it must be crafted with caution.

**2) What are your thoughts on a proposal to abolish the requirement that persons convicted of capital crimes exhaust all available state remedies before petitioning in federal court for a writ of habeas corpus?**

Generally, it is my opinion that exhaustion of state remedies should be maintained. Requiring exhaustion allows the state judicial process, wherein the trial took place, to ascertain and correct any errors of constitutional magnitude. In addition to underscoring the concept of federalism and due respect for state courts, the exhaustion requirement allows the courts with the most substantial and relevant contact with the parties and the facts to have the first chance to correct any errors.

**3) What do you think of time limits requiring federal district and circuit courts to act on habeas petitions within a specified period of time?**

Time limits would expedite resolutions of claims contained in a habeas petition. However, the number of habeas petitions coupled with a time limit for acting swiftly may result in a given petition not receiving adequate review where a legitimate and compelling constitutional claim is presented. Consequently, caution must be exercised in considering imposing time limits.

### **ROLE OF A FEDERAL JUDGE**

As a federal judge, you would be bound to follow precedent laid down by the Supreme Court and by the Court of Appeals in which you sit. You will, however, be faced with cases of first impression.

**What principles will guide you, or what methods will you employ, in deciding cases of first impression?**

Without precedent, the responsibility of the judge, if interpreting a statute, is to be guided by the words of the statute and legislative history where



available and applicable to attempt to understand what Congress intended. If the issue involves a new principle of law, the judge must be guided by the most analogous existing precedent applicable to the specific facts of the case before the judge.

**Are you committed to following all Supreme Court precedents faithfully and giving them full force, even if you personally disagree with some of them?**

I am committed to and will follow the precedents of the Supreme Court and my Circuit faithfully and give them full force even if I personally disagree with some of them.

**Under what circumstances do you believe it is appropriate for a federal district judge should refrain from consideration of a case which involves a political question?**

I will not permit my political opinions or views, if I have any, to enter into my decision making.

**Under what circumstances do you believe it is appropriate for a federal district judge to depart from the principle of "stare decisis?"**

Stare decisis is the bulwark of our legal system. Judges are always bound by existing precedent. It would be extraordinarily rare that a district court would not adhere to the principle of stare decisis; and that would be only in the very unusual situation where a prior judgment was totally wrong in light of an intervening Supreme Court or Circuit court decision or a new statute.

## CONSTITUTIONAL ISSUES

**What is your view of Constitutional interpretation -- do you think it should be strictly construed as the Founding Fathers wrote it or do you believe the interpretation of its provisions should change over time?**

Generally, I believe that a judge should adhere as closely as possible to the Constitution as it was originally drafted and interpreted by our Founding Fathers. But our country and the world have changed since the 18th Century and the magnificence of the document is that it is not rigid and brittle but drafted with broad terminology so that it is capable of gently and cautiously adjusting to the changes of time. But these adjustments and evolutionary changes must be accomplished slowly and only by close adherence to established precedents.



Do you feel the federal sentencing guidelines have been effective in the equitable administration of justice at the federal level?

In my view the sentencing guidelines generally have been effective in the equitable administration of justice at the federal level. They have created predictability in sentencing to assist in making defendants, defense attorneys, prosecutors, and the public much more certain what the sentence will be for the commission of a particular crime. Concomitantly, sentences are much less likely to be based on the personal predilections of particular judges.

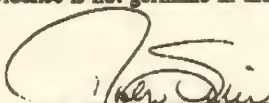
#### ADDITIONAL QUESTION FOR ROSLYN SILVER

Ms. Silver, in response to an earlier question I asked, you indicated a belief that the Equal Protection Clause of the U.S. Constitution may allow the consideration of statistical evidence of race discrimination in the implementation of the death penalty. However, in McClesky v. Kemp, 481 U.S. 279 (1987), the Supreme Court rejected a statistical theory of racial discrimination in the death penalty. It ruled that a capital defendant claiming a violation of the federal Equal Protection Clause must show the existence of purposeful discrimination and a discriminatory effect on him or her.

Would you please more fully explain under what circumstances you believe it might be appropriate to consider statistical evidence of racial discrimination in the implementation of the death penalty?

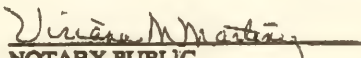
As I stated at the hearing, I do not believe that factors such as race which are unrelated to the unique facts of a given case are appropriate considerations when implementing the death penalty. I also am aware of and will adhere to the decision of the Supreme Court of the United States in McClesky v. Kemp, 481 U.S. 279 (1987), where the court rejected a statistical theory of racial discrimination in the death penalty. My reference to the Equal Protection Clause at the Senate Judiciary Hearing was meant to convey that it can under certain circumstances be relevant but only if a defendant in relying on the Equal Protection Clause is able to demonstrate the existence of purposeful discrimination and a discriminatory effect on him or her in a particular case. Statistical evidence is not germane in these issues.

10/4/94  
DATE  
STATE OF ARIZONA } ss.  
COUNTY OF MARICOPA }

  
\_\_\_\_\_  
ROSLYN SILVER

Subscribed and sworn to before me by ROSLYN SILVER this 4th day of October, 1994.

My commission expires  
May 17, 1996

  
\_\_\_\_\_  
NOTARY PUBLIC

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Alvin Wesley Thompson

(My legal name is "Alvin Wesley Thompson, Jr."; however, I have not used the "Jr." since I was in college.)

2. Address: List current place of residence and office address(es).

Current Residence:

870 Windsor Avenue  
Windsor, Connecticut 06095

Office Address:

Robinson & Cole  
One Commercial Plaza  
Hartford, Connecticut 06105

3. Date and place of birth.

March 2, 1953  
Baltimore, Maryland

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Wife: Lesley Anne Morgan Thompson  
Maiden Name: Lesley Anne Morgan (used professionally)  
Occupation: Environmental Educator  
Employer: Schooner, Inc.  
60 South Water Street  
New Haven, Connecticut 06519

5. **Education:** List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Princeton University  
Bachelor of Arts, 1975  
Dates of Attendance: September 1971 to June 1975

Yale Law School  
Juris Doctor, 1978  
Dates of Attendance: September 1975 to May 1978

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer, 1976 and Summer, 1977:  
Semmes, Bowen & Semmes  
250 West Pratt Street  
Baltimore, Maryland 21201

Summer clerk

1978 to present:  
Robinson & Cole  
One Commercial Plaza  
Hartford, Connecticut 06103-3597

Associate, 1978 to 1984  
Partner, 1985 to present

1993 to present:  
Bankers Trust Company Connecticut, Ltd.  
One Fawcett Place  
Greenwich, Connecticut 06830

Member, Board of Directors

(Note: In addition to the above-described employment record, I have served, without remuneration, as a director of several nonprofit organizations, as described in the response to Question 10.)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have never served in the military. I was classified 1-A, but my number in the draft lottery was very high and I was never called to serve.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association, Section of Business Law  
 - Co-chair of Ad Hoc Committee on Involvement of Women and Minorities; 1992 to present  
 - Member, Editorial Board of Business Law Today; 1993 to present

Conference of Minority Partners in Majority/Corporate Law Firms, American Bar Association

Connecticut Bar Association

Hartford County Bar Association

National Bar Association

George W. Crawford Association, Inc.  
 - Secretary and member of the Board of Directors; 1992 to present

The Capital Area Foundation for Equal Justice, Incorporated

- Member of the Board of Directors; 1993 to present

American Immigration Lawyers Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

a. Organizations Active Before Public Bodies:

Democratic Party  
Connecticut Civil Liberties Union  
American Civil Liberties Union  
Taxpayers' Educational Alliance (TEA), Town of Windsor

b. Other Organizations

The Salvation Army, Chairman, Advisory Board for  
Greater Hartford

The Bushnell Park Foundation, Vice President and member  
of the Board of Directors

First Church of Christ in Hartford (currently serve as  
chair of the social action committee and a church  
school teacher)

Trustees of the Warburton Chapel

Hartford Hospital, member of the Board of Directors

Hartford Seminary, Corporator

Yale Law School Association, member of the Executive  
Committee

The Initiative for Public Interest Law at Yale, member  
of the Board of Directors

Princeton Alumni Association of Central Connecticut,  
just finishing over ten years of service as Chairman of  
the Alumni Schools Committee and member of the Board of  
Directors

Gilman School Alumni Association

Leadership Greater Hartford Alumni Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for



any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of Connecticut Superior Court;  
May 16, 1979

United States District Court  
for the District of Connecticut;  
June 11, 1979

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

- Paper on "Developments Relating to Public Debt Securities", as part of the Tenth Annual Review of Developments in Business Financing, presented by the Committee on Developments in Business Financing of the American Bar Association Section of Business Law, April 1993.
- Paper on "Developments Relating to Asset-Backed Securities, Mortgage Securities and Private Placements", as part of the Eleventh Annual Review of Developments in Business Financing, presented by the Committee on Developments in Business Financing of the American Bar Association Section of Business Law, April 1994.

13. **Health:** What is the present state of your health? List the date of your last physical examination.

Excellent  
May 12, 1994

14. **Judicial Office:** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I have never held judicial office.

15. **Citations:** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or

where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

I have never been a judge.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

I have never held public office.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;  

I never served as a clerk to a judge.
  2. whether you practiced alone, and if so, the addresses and dates;  

I never practiced alone.
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

September 1978 to present:  
 Robinson & Cole  
 One Commercial Plaza  
 Hartford, CT 06103

I started as an associate at Robinson & Cole in September 1978 and became a partner as of January 1, 1985. I became managing partner in September 1991.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

The general character of my practice has been as follows:

General Practice, including litigation (1978-1980):

For about one and one-half years, I was what my firm termed "generally available", i.e., available for assignments from all lawyers in the firm. For the first year, the bulk of my work came from trial lawyers; this litigation work covered a variety of areas but related primarily to commercial or insurance defense litigation. Beginning in 1980, I gradually began taking on more finance and corporate work. The process of winding down my involvement in litigation matters (exclusive of summary process cases) took until approximately June 1981. As is noted below, I continued to handle summary process matters until approximately January 1984.

Immigration (1979 to 1991):

I represented mostly business clients that were either multinational corporations interested in transferring employees from abroad to the United States, or other employers in the United States who desired to employ workers who were neither citizens nor permanent residents of the United States. However, I also represented (i) a number of individuals who were seeking permission to work in the United States or permanent residence or political asylum here, and (ii) a number of individuals who were in exclusion or deportation proceedings.

Finance and Corporate (1980 to present):

I represented a number of lenders in structuring and negotiating the terms of secured and unsecured loans, including construction, term and revolving credit facilities, and syndicated and multi-

rate option facilities. I also represented a variety of clients in connection with securities-related matters, including stock repurchases, real estate syndications, and investments in group trusts, limited partnerships, and insurance company separate accounts.

Additionally, since September 1991, I have served as Managing Partner of Robinson & Cole.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

My typical clients have been regional banking companies, special finance companies, state governmental entities and privately held businesses. I have also represented on many occasions individuals or nonprofit organizations, although I would not characterize them as "typical" clients. I have specialized in the area of commercial finance. In the past, I also specialized in handling immigration matters for corporate clients.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

My litigation experience consists principally of (i) numerous assignments from trial lawyers at Robinson & Cole during the period from September 1978 to approximately June 1981, when I was a junior associate, (ii) extensive experience as the attorney responsible for handling numerous summary process matters (both for regular clients of the firm and for pro bono clients referred to me by the Legal Aid Society) during the period from June 1979 to approximately January 1984, and (iii) handling several deportation/exclusion matters before the Immigration and Naturalization Service, where I either dealt with a Deportation Officer or appeared before the Immigration Judge. More recently, I have had exposure to litigation in my capacity as Managing Partner of a large law firm that has a substantial litigation

practice and through involvement in an advisory capacity with litigation being handled by trial lawyers in my firm for clients for whom I was primarily responsible.

\* \* \* \* \*

The assignments I received from trial lawyers from September 1978 to June 1981 covered a variety of areas but related primarily to commercial or insurance defense litigation. They included:

- extensive work on discovery on a major piece of REIT litigation, where my firm represented an affiliate of Hartford National Bank;
- covering hearings in connection with court approval of a settlement in an antitrust suit brought in federal court by the Connecticut Attorney General against a group of private companies, where we represented one of the defendants; and
- covering the weekly motions calendar in Superior Court for a period of approximately six months.

My other assignments ranged from general research projects to drafting pleadings, motions and supporting memoranda and interrogatories, to examining a judgment debtor and taking a pair of depositions.

With respect to summary process matters, I handled approximately 48 individual cases, representing both plaintiffs and defendants, and one large case where I represented a nonprofit institution that was required to close an apartment building owned by it. I worked independently on those matters where I represented the tenant, which were all cases that had been referred to me by the Legal Aid Society. On matters delegated to me by partners in the firm, I also worked independently but made sure that the partner who was the client contact was always informed as to both my strategy and the status of the matter.

While not of great significance in terms of the complexity of the issues or the economic



interests at stake, two matters I handled for pro bono clients early in my career are illustrative of my experience in the summary process area. In the first case, I represented Diana and Herbert Wright, a young couple who had been unlawfully evicted from their apartment. After interviewing the couple, I prepared a writ, summons and complaint and initiated the lawsuit under Connecticut's entry and detainer statute, pursuant to which double damages are allowable. I subsequently amended the complaint and prepared a request for disclosure. I then subpoenaed a Hartford police officer together with his records, and prepared for trial. The case settled just as the trial was scheduled to begin, with judgment being entered for my client. Although we had a good case in terms of liability, my clients' property had depreciated in value significantly, and the fair market value of the property they lost was significantly less than its replacement value.

In the second matter, my client was being evicted for non-payment of rent but took the position that the premises were uninhabitable. I initially filed a Motion to Dismiss, and the lawsuit was dismissed on the ground that the Notice to Quit was void. Another action was commenced, again with a defective Notice to Quit. I filed another Motion to Dismiss, which was also granted. When the third suit was initiated, the Notice to Quit was proper. I filed a Request to Revise, followed by an Answer. I then filed an Amended Answer and Special Defense. When the case was eventually scheduled for trial, it was settled, with judgment of possession being entered against my client.

\* \* \* \* \*

My primary exposure to litigation in the recent past has been as a result of (i) indirect involvement, in my capacity as Managing Partner, with the practices of the trial lawyers in my firm, and (ii) involvement in an advisory capacity in two matters where trial lawyers in the firm have handled litigation on behalf of a business

client for whom I was primarily responsible.

During the period from late 1987 to mid-1991, I worked closely with some of my litigation partners on a matter for one of our corporate clients. Our client held a seat on the Philadelphia Stock Exchange and was the victim of unauthorized trading. While I did not handle the litigation aspects of the representation, I worked closely with the trial lawyers as I was the member of the firm most familiar with the client. The litigation was commenced in Superior Court on behalf of our client. The defendants petitioned the United States District Court for removal of the action from state court to federal court, but their petition was not granted. The defendants then moved to stay the state court proceedings and arbitrate the matter before a panel at the Philadelphia Stock Exchange. The court granted the defendants' motion to stay pending the outcome of arbitration or a decision by the Exchange not to arbitrate. We moved, unsuccessfully, on behalf of the plaintiffs to have that decision reconsidered. The matter was eventually settled.

From mid-1990 to mid-1992, I worked closely with the litigators in my firm, again in an advisory capacity, on a matter involving the Connecticut State Treasurer. We commenced a lawsuit in Superior Court on behalf of the Northeast Treasurers Conference of the National Association of State Treasurers against a bank that had deposited a check with an unauthorized endorsement into an improper account. The Attorney General's Office simultaneously commenced a lawsuit on behalf of the Connecticut State Treasurer, and our client was named as a third-party defendant in that action. The matter was eventually settled after several months of discovery.

Additionally, over the past couple of years, I have served as the supervising attorney for associates who have handled three pro bono cases, referred by the Legal Aid Society to them. In each case, our client sought the return of a security deposit.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

Almost all of my appearances were in state courts of record.

3. What percentage of your litigation was:

- (a) civil;
- (b) criminal.

All of my experience was in civil litigation.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

There were no such trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case: (a) the date of representation; (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

My litigation experience is summarized in response to question 17.c above.

In addition, I have had significant other experience with complex matters. The following is a summary of some of the significant non-litigation matters personally handled by me:

- a. In 1986, I represented the Treasurer of the State of Connecticut in the sale of a series of pass-through mortgage-backed certificates, each of which represented an undivided interest in a pool of single family mortgage loans; the certificates had an aggregate outstanding balance of approximately \$242 million. The certificates were sold to a trust, which, in turn, issued Collateralized Mortgage Obligations backed by the certificates. This trust was one of the first REMICs established under the Tax Reform Act of 1986. The ability of the parties to proceed with the transaction hinged on the degree to which the Treasurer had the power to be a party to such a transaction, and I analyzed the relevant issues and advised all parties as to how the transaction had to be structured so as to be legally permissible. An opinion was obtained from the Office of the Attorney General of the State of Connecticut, and I was the lawyer responsible for explaining the transaction and our analysis to that office. Additionally, I reviewed and negotiated the trust agreement pursuant to which the issuer was formed, along with the indenture pursuant to which the Collateralized Mortgage Obligations were issued and the related bond insurance policy. This transaction closed at the beginning of January 1987.

The attorneys with whom I had substantial contact on this transaction were:

Counsel for Alex Brown & Sons,  
the Placement Agent  
 Krista Bean Dorrian (then with Piper &  
 Marbury)  
 National Corporation for Housing  
 Partnerships  
 Washington, D.C. -  
 (202) 347-6247

James G. Rafferty (then with Piper &  
 Marbury)  
 Harkins Cunningham  
 Washington, D.C.  
 (202) 973-6000

Counsel for The Connecticut National  
Bank, the Owner-Trustee

Scott L. Murphy  
Thomas F. Tresselt  
Shipman & Goodwin  
Hartford, Connecticut  
(203) 251-5810

- b. During the mid to late 1980's, I represented (with key assistance from an associate) a former high official of Liberia who was seeking political asylum in the United States under the Immigration and Nationality Act. This individual had served as Finance Minister of the government that was overthrown in 1980 and eventually became a leading challenger to the new government. She was charged with sedition and subsequently convicted and sentenced to prison. Her release was negotiated, and she managed to get to the United States. I developed a strategy for first obtaining professional worker (H-1) status for this former official and then pursuing an application for political asylum and ultimately an application for permanent residence. In the context of the application for political asylum, we analyzed the possible arguments for relief in view of the statutory and regulatory requirements, as well as the case law, and prepared a statement of facts, together with supporting documentation, that demonstrated that our client was entitled to relief. I was informed that this official was one of only a few (if not the only) persons similarly situated to have his or her request for asylum granted.

The outside lawyer with whom I worked on this matter was in-house counsel for the prospective employer of the former foreign official. His name and telephone number is:

Lawrence M. Friedman, Esq.  
Equator Bank Ltd.  
Glastonbury, Connecticut  
(203) 633-9999

- c. I represented The Connecticut Bank and Trust Company, N.A. and Bank of New England, N.A. in their capacity as the Co-Agents for a group of eight banks in establishing a \$150 million credit facility for a newspaper holding company. I drafted and negotiated the loan agreement, which provided for both Prime Rate and LIBOR (i.e.,



London Interbank Offered Rate) pricing (and conversions from one to the other), interest rate protection, and a rather unusual arrangement of having co-agents for the bank group. I also structured the subsidiary guarantees and legal opinions regarding the same and was primarily responsible for analysis of the interplay between the bank group debt and issues of outstanding junk bond debt of the borrower, which included subordinated reset notes and subordinated discount debentures. I supervised the preparation of, and negotiated the terms of, the pledge agreements and other loan documents. I oversaw due diligence with respect to the borrower and its subsidiaries. This transaction closed in July 1988.

Counsel for the borrower in this transaction was:

Andrew R. Brownstein, Esq.  
Wachtell, Lipton, Rosen & Katz  
New York, New York  
(212) 403-1000

d./e. I represented two regional banks, i.e., The Connecticut National Bank and The Connecticut Bank and Trust Company, N.A., in connection with their financing in September 1988 of the multi-million dollar acquisition of Hartford's NHL hockey team. I analyzed the underlying acquisition transaction and the implications of the terms of that transaction for the lenders. I also analyzed the NHL's bylaws and the franchise agreement and negotiated the terms of the NHL's consent to our transaction. I drafted and negotiated the revolving and term loan agreement, security agreement, mortgage, and other loan documents, as well as the legal opinions.

In September 1989, I represented the same lenders in a multi-million dollar financing of the construction by the hockey team of club seating in the Hartford Civic Center Coliseum. We simultaneously amended the 1988 revolving and term loan agreement. At the conclusion of this transaction, three multi-million dollar financing vehicles from each lender were in place for the benefit of the borrower. Each of these financing vehicles was cross-collateralized and cross-defaulted, with specified priorities as to payment.

Counsel for the borrower in the September 1988 transaction was:

David E. Sturgess, Esq.  
Updike, Kelly & Spellacy, P.C.  
Hartford, Connecticut  
(203) 548-2600

Counsel for the borrower in the September 1989 transaction was:

William E. Kelly, Esq.  
Hebb & Gitlin  
Hartford, Connecticut  
(203) 240-2700

- f. I represented The Connecticut Bank and Trust Company, N.A. in an April 1989 refinancing of \$4 million of debt of three companies that owned and operated radio stations in California, Connecticut and New York. Over the next several months, I represented the lender in restructuring the original loan and lending an additional \$25 million to the group of companies for the purpose of financing the acquisition of an additional radio station. I structured the financing transactions to accommodate the fact that FCC approvals for transfer of the radio license of the acquired company had not become final, the fact that in one case trusts were involved as the borrower, and the fact that there were special factors to be considered because Subchapter S corporations were involved as borrowers. I drafted and negotiated the loan documents (e.g., loan agreements, security agreements, stock pledge agreements, subordination agreements and mortgages) and legal opinions. This transaction closed in August 1989.

Counsel for the borrower in this transaction was:

Michael Connolly, Esq.  
Lane & Mittendorf  
New York, New York  
(212) 972-3000

- g. I represented a Canadian trust company that was one of two lenders financing the tax-free reorganization of a multinational group of companies headquartered in my state. As special Connecticut counsel, I drafted and negotiated a \$3.3 million (Canadian) term loan agreement, an

interest payment agreement, a security agreement, a guaranty, a stock pledge agreement and the legal opinion of the borrower's counsel; I also reviewed and negotiated subordination agreements. I was responsible for coordinating the review for the benefit of the lender of the tax analysis of the reorganization and the applicability of withholding tax requirements in the case of the foreign client. I also analyzed the interplay between the respective loan agreements of the lenders. I reviewed each phase of the transaction with the trust company's regular counsel in Montreal. This transaction closed in February 1989.

The attorneys with whom I had substantial contact on this transaction were:

Counsel for the Borrower

Harold B. Finn, III, Esq.  
Edward A. Weiss, Esq.  
Finn Dixon & Herling  
Stamford, Connecticut  
(203) 964-8000

Regular Counsel for the Canadian Trust Company

Jean Francois Giroux, Esq.  
McCarthy Tetrault  
Montreal, Quebec  
Canada  
(514) 397-4144

Counsel For the Other Lender

David A. Swerdloff  
Day, Berry & Howard  
Stamford, Connecticut  
(203) 977-7300

- h. I represented Fleet Credit Corporation, a special finance company that was making an asset-based loan, underwritten primarily on the basis of eligible accounts receivable and inventory, in connection with the acquisition of the stock of a manufacturing company qualified to do business in a dozen jurisdictions. My client agreed to lend \$5 million (with a sublimit for letters of credit) plus an additional \$600,000 in the form of an equipment loan. The acquisition and operation of the company going forward was also being financed by a special finance company that had underwritten its \$4.4 million loan primarily on the basis of

machinery and equipment, and by a purchaser of \$2.5 million in debt securities, which also received a warrant for the purchase of stock. I drafted and negotiated my client's loan and security agreement and the other loan documents (e.g., negative pledge, landlord waivers and assignments of patents, copyrights and trademarks), and reviewed and negotiated the loan agreement of the other lender and the securities purchase agreement. I represented my client in the negotiations among the three parties with respect to an intercreditor, standstill and subordination agreement; this involved protracted negotiations over standstill provisions, priorities with respect to payment and order of liens, and excess cash flow recapture provisions. I also reviewed the documents for the underlying acquisition transaction, prepared and negotiated a variety of legal opinions and reviewed the documentation related to the payoff of the borrower's prior lender. This transaction closed in February 1991.

The attorneys with whom I had substantial contact on this transaction were:

Counsel for the Borrower

Glenn Scolnik, Esq. (formerly with  
Sommer & Barnard)  
Hammond, Kennedy, Whitney &  
Company, Inc.  
Indianapolis, Indiana  
(317) 571-1048

Counsel for the Machinery and  
Equipment Lender

Randall S. Dalton, Esq.  
Kenneth R. Merritt, Esq. (each formerly  
with McCabe, O'Donnell, Folk, Wright &  
Merritt)  
Gammage & Burnham  
Phoenix, Arizona  
(602) 256-0566

- i. In 1993, I acted as special Connecticut counsel, with the assistance of one of my partners, to a group of special purpose entities that were selling approximately \$195 million of mortgage loans, originally held by the State of Connecticut pension funds, to a Delaware business trust. This trust, in turn, issued Collateralized Mortgage Obligations. I was the key person in terms of



advising the parties as to the limitations on the power of the State Treasurer to take certain actions and the implications of those limitations in terms of the structure of the transaction. The structuring of the transaction took place over the course of a year. Our firm delivered the "true sale" opinion and an opinion concerning the enforceability of the purchase agreements for which I and another partner were equally responsible. This transaction closed in June 1993.

The attorney with whom I had substantial contact on this transaction was:

Counsel for the Servicer  
 Drake S. Tempest, Esq.  
 O'Melveny & Myers  
 New York, New York  
 (212) 326-2165

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

A summary describing some of the most significant matters I have handled for clients is included in response to question 18 above. The following is a summary of other significant legal activities pursued by me, i.e., a brief overview of my responsibilities as Managing Partner of Robinson & Cole and a description of my most significant activities in bar associations:

a. Service as Managing Partner

Since September 1991, I have served as Managing Partner of a firm that is approximately 150 lawyers in size; the firm is headquartered in Hartford and has significant branch offices in Stamford and Boston. At the time I commenced my term as Managing Partner, the firm had a branch office in Stamford only. One of my major tasks during the period from early 1992 until early 1993 was to direct the analysis, negotiations and planning involved in our firm's decision to take into the firm the principals and employees of Harrison & Maguire, P.C., an old-line Boston firm



of approximately 25 attorneys. The combination became effective on April 1, 1993.

Together with a Managing Committee (which has ranged in size from five to seven members during my term), I am responsible for the operation of all of our offices. Our firm has a substantial trial practice. There are approximately 60 attorneys in our trial section. In addition, there are several attorneys in our land use/environmental section and employment section who are trial lawyers. Our other primary practice areas are, in general terms, corporate and finance, real estate, tax, and trust and estates. As Managing Partner, I have not only gained extensive experience in the management of lawyers and their matters, but also have had to deal with issues arising in a wide range of practice areas.

b. Significant Activities in Bar Associations

I am a member of the Section of Business Law of the American Bar Association. There are three ways in which I have had significant involvement in the work of that Section. First, as a member of the Committee on Developments in Business Financing, I have presented a paper on developments in business financing at each of the Spring Meetings in 1992, 1993 and 1994. Two of these papers were published.

Second, since 1992, I have served as co-chair of the Ad Hoc Committee on Involvement of Women and Minorities. In that capacity, I have been responsible, with my co-chair, for presentation at the Spring Meeting in 1993 of a program on "Valuing Diversity: Hiring and Retention of Minorities" and presentation at the Spring Meeting in 1994 of a program on "Retention and Advancement of Women Attorneys". We have also organized a Women's Business Law Network, and we are currently organizing a program on business development for the 1995 Spring Meeting. In a related activity, in August 1993 I spoke on a panel sponsored by the ABA's Commission on Opportunities for Minorities in the Profession at the ABA Annual Meeting on "Increasing Diversity: The Retention and Promotion of Minority Lawyers in Law Firms and Corporate Law Departments".

Third, last year, I began a term as a member of the Editorial Board of Business Law Today, which

is the magazine published by the Section of Business Law.

In addition to the foregoing activities, I am a member of the board of directors and the Secretary of the George W. Crawford Association, Inc., which is an affiliate of the National Bar Association.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Every year, each partner in my law firm is assigned a percentage interest in the profits of the firm, which is adjusted on a pro-rata basis if that partner leaves the partnership prior to the end of the calendar year. At the end of the calendar year, there is a final distribution in accordance with the respective interests of each person who was a partner in the firm during the course of that year. My law firm does not have capital accounts, and there is no buy-out of a departing partner. All payments to me by the law firm would be completed by the end of the year during which I leave the firm.

I have an HR-10 retirement account with Shawmut Bank through my law firm's retirement plan. All contributions were made by me, and the firm has no control over my account. I have the option of rolling over the assets after I leave the firm.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will not be involved in any cases involving clients or former clients of my law firm, involving anyone I know personally, or involving any financial institutions with which I have business dealings, or in any similar situations. I will be guided by the Code of Judicial Conduct in determining areas of concern. There are currently no other categories of litigation that are likely to present potential conflicts of interest for me. The only areas where financial arrangements may present a potential conflict of interest relate to financial interests disclosed in the financial net worth statement attached in response to Part II, Question 5.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1976, may be substituted here.)

See attached copy of Form AO-10, the financial disclosure report required by the Ethics Reform Act of 1989.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

**FINANCIAL STATEMENT  
NET WORTH**

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks		76 316	Notes payable to banks - secured		
U.S. Government securities - add schedule			Notes payable to banks - unsecured		
Listed securities - add schedule			Notes payable to relatives		
Unlisted securities - add schedule (1)		149 222	Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable - add schedule (2)		64 795
Real estate owned - add schedule (2)		156 000	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts - itemize:		
Autos and other personal property		22 000			
Cash value - life insurance		2 000			
Other assets - itemize:					
HR-10 Retirement Fund		167 132			
Robinson & Cole Building		1 824			
Equity			Total liabilities		64 795
			Net worth		509 699
Total assets		574 494	Total liabilities and net worth		574 494
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor (3)	See	note	Are any assets pledged? (Add schedule).		No
On leases or contracts		No	Are you defendant in any suits of legal actions?		No
Legal Claims		No	Have you ever taken bankruptcy?		No
Provision for Federal Income Tax		No			
Other special debt (3)	See	note			



Footnotes

- (1) Franklin Connecticut Tax-Free Income Fund
- (2) Residence at 870 Windsor Avenue, Windsor, CT;  
Mortgage in favor of Shawmut Mortgage Corporation
- (3) All partners of Robinson & Cole, which is a Connecticut general partnership, are contingently liable for its debts. The most significant debt is a note to Travelers Corporation, the proceeds of which were used to purchase our office space in 1984; the partners are jointly and severally liable in this note, but I will be released from this contingent obligation.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Thompson, Alvin W.	2. Court or Organization  United States District Court for the District of Connecticut	3. Date of Report  9/14/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  District Judge (nominee)	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>9/14/94</u> <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period January 1, 1993 to August 31, 1994
7. Chambers or Office Address c/o Robinson & Cole One Commercial Plaza Hartford, CT 06103	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations  Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts,  
checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

<input type="checkbox"/> NONE (No reportable positions)	
Partner	Robinson & Cole
Member, Board of Directors	Bankers Trust Company Connecticut, Ltd

Continued on Attachment I.

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

<input type="checkbox"/> NONE (No reportable agreements)	
(Unwritten)	See Attachment II re distribution of law firm profits.
1/1/68, as amended	Robinson & Cole Retirement Plan -- I will continue to have money in the plan for an undetermined period of time.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

<input type="checkbox"/> NONE (No reportable non-investment income)	
1 1992	Robinson & Cole -- compensation as a partner in a law firm \$206,220
2 1993	Robinson & Cole -- compensation as a partner in a law firm \$171,738
3 1994	Robinson & Cole -- compensation as a partner in a law firm \$ 81,780
4 1992, 1993 and 1994	Schooner, Inc. -- compensation as a part-time teacher (S) \$
5	\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Alvin W. Thompson

9/14/94

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

Exempt

2

3

4

5

6

7

8

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

Exempt

2

3

4

\$

\$

\$

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less E = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Alvin W. Thompson

Date of Report

9/14/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical: (S) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (D) for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-E)	(2) Type (e.g., div., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-V)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-E)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 RR-10 Retirement Plan, Shawmut Bank, Hartford, CT	D	Div.	M	T	Exempt				
2 Franklin Connecticut Tax-Free Income Fund, San Mateo, CA	D	Int.	M	T	Exempt				
3 Checking/Savings Accounts - Fleet Bank, Windsor, CT	C	Int.	L	T	Exempt				
4 Checking/Savings Accounts - Bank of Boston Connecticut	B	Int.	K	T	Exempt				
5 Hartford, CT									
6 Interest as a partner in real estate owned and occupied by Robinson & Cole at One Commercial Plaza, Hartford, CT	A	Equity	J	Q	Exempt				
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes:	A=\$1,000 or less	B=\$1,001 to \$2,500	C=\$2,501 to 5,000	D=\$5,001 to \$15,000
(See Col. B1 & B4)	E=\$15,001 to \$50,000	F=\$50,001 to \$100,000	G=\$100,001 to \$1,000,000	H=\$1,000,001 to \$5,000,000
2 Value Codes:	J=\$15,000 or less	K=\$15,001 to \$50,000	L=\$50,001 to \$100,000	M=\$100,001 to \$250,000
(See Col. C1 & C3)	N=\$250,001 to \$500,000	O=\$500,001 to \$1,000,000	P=\$1,000,001 to \$5,000,000	Q=\$5,000,001 or more
3 Value Method Codes:	Q=Appraisal	R=Cost (real estate only)	S=Assessment	T=Cash/Market
(See Col. C2)	U=Book Value	V=Other	W=Estimated	

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Alvin W. Thompson

Date of Report:

9/14/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

Part III - I am a member of the Board of Directors of Bankers Trust Company

Connecticut, Ltd. This company pays fees to outside members of its

Board of Directors. All fees paid to me for service on this board are

turned over to Robinson & Cole. I intend to resign from this board.

Part VI - As a partner in the law firm of Robinson & Cole, which is a

Connecticut general partnership, I am contingently liable for

the debts of the partnership.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Alvin W. Thompson

Date September 14, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



## Attachment I

Form AO-10  
 Financial Disclosure Report  
Continuation of Part I -- Positions

<u>Position</u>	<u>Name of Organization/Entity</u>
Secretary and Member of the Board of Directors	George W. Crawford Association, Inc.
Member of the Board of Directors	The Capital Area Foundation for Equal Justice, Incorporated
Vice President and Member of the Board of Directors	The Bushnell Park Foundation
Member of the Board of Directors	Hartford Hospital
Member of the Executive Committee	Yale Law School Association
Member of the Board of Directors	The Initiative for Public Interest Law at Yale
Member of the Board of Directors	Princeton Alumni Association of Central Connecticut
Trustee	Hartt School of Music

## Attachment II

Form AO-10  
Financial Disclosure Report  
Continuation of Part II -- Agreements

Every year, each partner in my law firm is assigned a percentage interest in the profits of the firm, which is adjusted on a pro-rata basis if that partner leaves the partnership prior to the end of the calendar year. At the end of the calendar year, there is a final distribution in accordance with the respective interests of each person who was a partner in the firm during the course of that year. My law firm does not have capital accounts, and there is no buy-out of a departing partner. All payments to me by the law firm would be completed by the end of the year during which I leave the firm.

I have an HR-10 retirement account with Shawmut Bank through my law firm's retirement plan. All contributions were made by me, and the firm has no control over my account. I have the option of rolling over the assets after I leave the firm.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Since prior to my admission to the bar, I have devoted some time each year to serving the disadvantaged. During my second and third years at law school, I was a volunteer at New Haven Legal Assistance. Soon after I was admitted to the bar, I joined the Volunteer Legal Aid and Public Defender Program in Hartford. Several cases were referred to me each year, mostly eviction defense work but also a few Social Security appeals and wills. I participated in this program through 1983. I received a certificate of appreciation from the Legal Aid Society of Hartford County in 1983.

In addition to pro bono legal work, I have been consistently engaged in community service with organizations that have as their focus serving the disadvantaged.

In 1979, I became a member of the Greater Hartford Advisory Board for The Salvation Army. Over the years, I have served on the Emergency Shelter Committee, the Human Services Committee (which is responsible for a variety of social service programs), and the Northend Corps Committee. I chaired the Northend Corps Committee for several years and worked with the staff to develop programs to benefit residents in the northern part of Hartford, which has a significant number of families living below the poverty level. In 1993, I commenced serving as Chairman of the Advisory Board. I have also performed pro bono legal services for this organization.

Since 1981, I have been a member of the First Church of Christ in Hartford. I am now in my second stint of service on the social action committee, which I currently chair. Part of our committee's mission is to do outreach work in the City of Hartford. During the early to mid-80's when I chaired this committee, one of our routine projects was to serve meals at a local

shelter. We also are responsible for collection of food offerings, which go to a local Food Pantry.

In the early 1980's, I served as a member of the board of directors of Center City Churches, Inc., an ecumenical social service agency, which has as its mission serving the disadvantaged. I devoted many hours in 1982 and 1983 to chairing a search committee charged with responsibility for hiring a new executive director from among over 100 candidates. I have also performed pro bono legal services for this organization.

In 1984, I joined the board of The Shelter for Women, which is a residential treatment facility for adolescent girls, most of whom are referred by the Connecticut Department of Children and Families. I served on this board until 1991, during which time I was on numerous committees. I served as president of the board from 1988 to 1990. I have also performed pro bono legal services for this organization.

Since 1989, I have been one of the Trustees of the Warburton Chapel. The trustees are responsible for the administration of a trust fund and allocation of the income to support a variety of programs designed to serve the disadvantaged. I have also performed pro bono legal services for this organization.

Since 1992, I have served on the board of The Bushnell Park Foundation. I have been the board member responsible for the work of the Education Committee, which is developing a curriculum utilizing Bushnell Park as a vehicle for enriching the educational experience for students at a pair of inner city elementary schools.

I am a founding member of the Capital Area Foundation for Equal Justice, Incorporated, an organization formed in 1993 to raise funds to help support the programs of Hartford's legal services organizations.

While I keep track of the time I spend on community service activities (other than time spent for my church), I do not keep a breakdown of such time by organization. However, during the past two calendar years (i.e., 1992 and 1993), my community service hours were on average approximately 120 hours per year -- exclusive of church activities. The majority of this time was spent on matters for community organizations which have as their focus serving the disadvantaged.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I have never belonged to such an organization.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is no such selection commission in my jurisdiction. My experience in the judicial selection process began when I was contacted by an aide to Senator Christopher J. Dodd, Mr. Stanley Israelite. Mr. Israelite inquired as to whether I would be interested in being recommended for a federal judgeship. I subsequently had several conversations with Attorney Diana Huffman, another aide to Senator Dodd. Finally, I had a personal meeting with Senator Dodd and Mr. Israelite. Subsequently, I submitted a Candidate's Questionnaire to Senator Dodd's office. I was then informed that Senators Dodd and Lieberman were recommending me for the United States District Court for the District of Connecticut.

Once I was recommended for the United States District Court, I was interviewed on behalf of the following organizations:

- On May 26, 1994 and June 6, 1994, I was interviewed by the Federal Judiciary Committee of the Connecticut Bar Association. The Committee was chaired by Wesley W. Horton, Esq.
- On July 1, 1994, I was interviewed by representatives of the Office of Policy Development of the United States Department of Justice. The interviewing team was led by Eleanor D. Acheson, Assistant Attorney General.



- On July 7, 1994, I was interviewed by Special Agents of the Federal Bureau of Investigation.
  - On July 29, 1994, I was interviewed by the Chair of the American Bar Association's Standing Committee on Federal Judiciary.
  - On August 22, 1994, I was interviewed by a representative of the National Bar Association.
  - On August 29, 1994, I was interviewed by the Second Circuit representative of the American Bar Association's Standing Committee on Federal Judiciary.
4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Under Article III of the Constitution, the federal judicial power extends to federal cases and controversies. The judiciary is charged with deciding cases on the merits of those cases. Application of the law in an objective manner to the issues and facts presented should be the basis for the decision. The proper role of the judge is adjudication, not legislation based on his or her personal philosophy. One's own views should not be the basis for making new law or thwarting laws one finds personally objectionable.

If the public is to have the appropriate level of confidence in our legal system and use it properly, it must be clear that there is stability and continuity in the law. If the rules are subject to change depending on the personal views of the judge before whom the litigants happen to appear, those who are striving to conduct their affairs consistent with the law will have no reasonable basis for planning how to conduct those affairs so that they stay within the law.

While a judge has a responsibility to manage the particular case before the court in the process of deciding that case, that responsibility does not translate into a charge to take cases as to which jurisdictional requirements have not been satisfied -- even if the case is one that the court believes will eventually be properly before the court.

Moreover, if the public is to have the proper degree of confidence in our legal system, it must also be clear that legislation comes from legislatures and not the judiciary. For instance, while there are particular cases where the proper holding as a matter of course has implications for a group beyond the litigants involved in the case (i.e., where that group has in common with the litigants a particular set of factual circumstances), a tendency in the direction

of broadening holdings beyond their proper scope seems to me inappropriate.

Similarly, while there are cases where a decision that an individual has a particular right properly yields the result that government and society must respect that right, the mere existence of such individual rights does not translate into affirmative duties for government and society in general, unless the legislature chooses to impose such affirmative duties.

In summary, the scope of a court's decision in each case that is properly before the court should be determined by the facts and issues presented by that case.

## ROBINSON &amp; COLE

Alvin W. Thompson  
Hartford  
203-275-8232

## Law Offices

One Commercial Plaza  
Hartford, CT 06103-3597  
203-275-8200  
Fax 203-275-8299

Financial Centre  
695 East Main Street  
P.O. Box 10305  
Stamford, CT 06904-2305  
203-964-1200  
Fax 203-359-8576

October 4, 1994

The Honorable Larry Pressler  
United States Senate  
Committee on the Judiciary  
Washington, D.C. 20510-6275

Dear Senator Pressler:

The following are my responses to the written questions submitted by you:

A. EXCLUSIONARY RULE

1) What are your views on the issue? Do you take an expansive or restrictive view of the Federal exclusionary rule? Do you favor a broader "good faith" exception to the rule than current law allows?

**RESPONSE:** I would characterize my view of the exclusionary rule as being neither expansive nor restrictive. I would view myself as at all times being bound by precedent on this issue established by the Supreme Court and the Second Circuit Court of Appeals.

Where there is intentional or bad faith conduct, application of the exclusionary rule seems appropriate. Application of the same sanction in cases where the improper conduct is unintentional seems inappropriate. We cannot truly prevent unintentional behavior. The challenge we as a society face is to develop appropriate exceptions to the exclusionary rule that do not result in exclusion of evidence for overly technical reasons (versus exclusion as a result of police misconduct) but at the same time do not hide the fact that constitutional rights have been violated.

2) What do you think of a proposal made last Congress which would have overturned Leon and the Fifth Circuit exception by modifying the exclusionary rule so as to admit evidence obtained with a defective warrant only if the officers requesting the warrant and the issuing magistrate can be proven to be "detached and neutral?"

# ROBINSON & COLE

The Honorable Larry Pressler  
October 4, 1994  
Page 2

**RESPONSE:** The issuing magistrate should, by definition, be detached and neutral. If the magistrate is not, then he or she may have engaged in professional misconduct. In the instance where the issuing officer is not detached and neutral, it would seem that something more, e.g. prejudice to the defendant's rights, should be present before the evidence should be excluded.

## B. DEATH PENALTY

1) Do you feel the death penalty constitutes one of the "cruel and unusual punishments" proscribed by the Eighth Amendment?

**RESPONSE:** The Supreme Court has held that the death penalty *per se* does not fall into the category of a cruel and unusual punishment proscribed by the Eighth Amendment. While a statute that allows the death penalty to be imposed arbitrarily or capriciously would violate the Eighth Amendment, one that contains appropriate safeguards (and such safeguards have been identified by the Supreme Court) is constitutional.

2) Is there any reason why you could not, in good conscience, vote to uphold the death penalty, if the facts of the case warrant its imposition?

**RESPONSE:** If I am confirmed, I would impose the death penalty in all appropriate cases with a clear conscience, knowing that I was properly carrying out the functions entrusted to me.

## C. HABEAS CORPUS

1) Do you agree there is a need for habeas corpus reform?

**RESPONSE:** The overload on the Court system and the impact on victims and/or their families of the lack of finality are real problems. However, an additional concern, which is of potentially tragic proportions, is the fact that the existence of a large volume of meritless petitions increases the probability that a petition that has merit will be deprived of the attention it deserves.



# ROBINSON & COLE

The Honorable Larry Pressler  
October 4, 1994  
Page 3

2) What are your thoughts on a proposal to abolish the requirement that persons convicted of capital crimes exhaust all available state remedies before petitioning in federal court for a writ of habeas corpus?

**RESPONSE:** It seems appropriate that such persons exhaust all available state remedies before petitioning in federal court for a writ of habeas corpus. The state has an obligation to afford the petitioner a constitutional trial, and the state should be given the chance to hear all claims that its processes were not constitutional prior to the matter being taken to federal court.

3) What do you think of time limits requiring federal district and circuit courts to act on habeas petitions within a specified period of time?

**RESPONSE:** In the absence of other measures to alleviate backlog in federal courts' dockets, strict time limits requiring federal district and circuit courts to act on habeas petitions within a specified period may be unworkable. However, there should be some mechanism to prevent a situation where an innocent individual could sit in prison for years while his or her petition goes unattended.

## D. ROLE OF A FEDERAL JUDGE

1) What principles will guide you, or what methods will you employ, in deciding cases of first impression?

**RESPONSE:** If the case involves the interpretation or a question of the applicability of a statute, I would look to the clear language of the statute, and then to the legislative history to the extent the legislative history is clear. If the statute were part of an integrated statutory scheme (for example, the 1933 Securities Act), I would also look to the purposes sought to be served by the statutory scheme. In any case, I would look to lines of analogous case law and try to determine which line of precedent speaks to issues and facts that are most like those present in the case at hand.

## ROBINSON & COLE

The Honorable Larry Pressler  
October 4, 1994  
Page 4

2) Are you committed to following all Supreme Court precedents faithfully and giving them full force, even if you personally disagree with some of them?

**RESPONSE:** I am fully committed to following all Supreme Court precedents faithfully and giving them full force, even if I personally disagree with some of them. The integrity and stability of our legal system depend on judges faithfully discharging this element of their responsibility.

3) Under what circumstances do you believe a federal judge should refrain from consideration of a case which involves a political question?

**RESPONSE:** I believe that a judge's political views should never enter into his or her analysis of a case. A judge should recuse himself or herself from a case where the judge believes as a matter of conscience that he or she cannot be objective and fair in making findings of fact and adhere to precedent in applying legal principles.

4) Under what circumstances do you believe it is appropriate for a federal district judge to depart from the principle of "stare decisis?"

**RESPONSE:** I believe it is appropriate for a federal district judge to depart from the principle of "stare decisis" where there is intervening legislation or an intervening decision of the Supreme Court or the Circuit Court of Appeals that indicates that the precedent that would otherwise be followed is no longer in full force and effect.

### **E. CONSTITUTIONAL ISSUES**

1) What is your view of Constitutional interpretation - do you think it should be strictly construed as the Founding Fathers wrote it or do you believe the interpretation of its provisions should change over time?

**RESPONSE:** While the original intent of the drafters of the Constitution is an important factor and should always be taken into account in the process of constitutional interpretation, I believe that in some instances the interpretation of the Constitution's provisions has changed,

# INSON & COLE

The Honorable Larry Pressler  
October 4, 1994  
Page 5

and will continue to change, over time. Assuming that appropriate deference is given to certain fundamental provisions of the Constitution, e.g. the separation of powers, such changes seem appropriate to me given the great changes in our world since the Constitution was ratified.

2) Do you feel the federal sentencing guidelines have been effective in the equitable administration of justice at the federal level?

**RESPONSE:** I believe the federal sentencing guidelines have been, as a general rule, a positive force in the direction of the equitable administration of justice at the federal level. I believe in the general concept of guidelines, as great disparities in sentencing of individuals who have committed comparable offenses and have comparable criminal histories would seem to undermine confidence in the fairness of the criminal justice system. Now that the guidelines have been in effect for some time, it may be appropriate for Congress to study them to determine whether modifications should be made to address some of the concerns about how the guidelines operate in specific instances.

\*\*\*\*\*

I hope the foregoing is responsive to your questions.

Respectfully submitted,

Alvin W. Thompson  
Alvin W. Thompson

# NBA

## OFFICERS

H.T. Smith  
President  
Miami, FL

Keith W. Watters  
President-Elect  
Washington, DC

U. Lawrence Boaz  
Vice President  
Houston, TX

Randy K. Jones  
Vice President  
San Diego, CA

Harold D. Pope  
Vice President  
Detroit, MI

Roy J. Rodney, Jr.  
Vice President  
New Orleans, LA

Andrea Pair Bryant  
Secretary  
Austin, TX

Joseph H. Hairston  
Treasurer  
Washington, DC

Thomasina H. Williams  
General Counsel  
Coral Gables, FL

Carolyn Y. Howard  
Parliamentarian  
Miami, FL

John Crump (Ex-officio)  
Executive Director  
Washington, DC

**MEMBERS-AT-LARGE**  
Ava Greene Davenport  
Seattle, WA

James M. Finley  
Atlanta, GA

Deborah L.S. McClain  
Los Angeles, CA

Beverly McQueary Smith  
Huntington, NY

Ray L. Shackelford  
Houston, TX

Elaine H. Spearman  
St. Louis, MO

Reply To:

September 30, 1994

The Honorable Joseph R. Biden, Jr.  
Chairman  
Committee on the Judiciary  
United States Senate  
Dirksen Senate Office Building  
Washington, D.C. 20510-6275

**Re: Nomination of Alvin W. Thompson to the United States District Court for the District of Connecticut**

Dear Mr. Chairman:

This report has been prepared by the *National Bar Association* ("NBA") in reference to the *President of the United States'* nomination of Mr. Alvin W. Thompson to the United States District Court for the District of Connecticut. An ad hoc committee composed of NBA members ("*Committee*"), chaired by the undersigned, prepared and conducted interviews of attorneys, professors, colleagues, former clients, and judges familiar with the nominee. I coordinated the investigation and prepared this report with the assistance of others. The NBA hereby submits this report in support of the above nomination.

Before embarking upon the subject of this report, however, I think it is important to explain the unique circumstances surrounding this nomination. The nominee is a corporate attorney. Consequently, he has little courtroom experience. While in the past this has caused some advising organizations some concern regarding fitness for a trial judgeship, the NBA does not see this limited experience as fatal. As a corporate attorney of some years, the nominee amassed considerable experience at the negotiation and draftsmen's table following a limited number of appearances in the courtroom. It is in this context that the NBA decided to conduct a thorough, independent investigation into the nominee's qualifications and to prepare a report on this Committee's findings.



NATIONAL BAR ASSOCIATION, INC., 1225 11TH STREET, N.W., WASHINGTON, DC 20001-4217. 202-842-3900  
70TH ANNUAL CONVENTION • JULY 30 - AUGUST 5, 1995 • BALTIMORE, MARYLAND

The Honorable Joseph R. Biden Jr.  
Committee on the Judiciary  
September 30, 1994  
Page 2

## EVALUATION GUIDELINES

Like the ABA the NBA evaluates a nominee's integrity, judicial temperament and professional competence. The ABA restricts the definition of professional competence to "such qualities as intellectual capacity, judgment, writing, analytical ability, industry, knowledge of the law, and professional experience." (The American Bar Association's Standing Committee on Federal Judiciary: What It Is and How It Works.) In contrast to this restricted view and as a matter of course, the NBA takes a more expansive view of a prospective nominee's professional competence. The NBA incorporates under the rubric of professional competence additional factors such as the nominee's community contact, social awareness, speaking ability, and the ordinary citizen's perception of the nominee. These factors, particularly professional experience, are judged within the context of the practice that most minority lawyers experience.<sup>1</sup>

## THE PROCESS

The NBA investigation spanned two months. I, as chair of the committee, personally interviewed the nominee formally and informally for two and one half 2½ hours. The interview covered a range of topics that included the following subjects: (i) his personal philosophy; (ii) his professional experience; (iii) his view of the law and its purposes; (iv) the justices and judges he admired and why; and (v) his role in the Hartford area community. In addition I read some of his principal writings.

Members of the Committee interviewed over forty (40) persons in Connecticut, Massachusetts, New York, and the District of Columbia. The references contacted included judges, opposing counsel, law professors, colleagues, subordinates, former clients, and citizens within the Mid-Atlantic region.

---

<sup>1</sup> The NBA Evaluation Guidelines are set forth in full detail in the attached Appendix.



The Honorable Joseph R. Biden Jr.  
Committee on the Judiciary  
September 30, 1994  
Page 3

## EVALUATION

### *Professional Background*

The nominee was born March 2, 1953, in Baltimore, Maryland. While most of his formative years were spent within a working class background in Baltimore, he completed his undergraduate studies at Princeton University in 1975. The nominee received his Juris Doctorate from Yale Law School in 1978. While attending Yale Law School, he worked in the Dixwell Avenue office of New Haven Legal Assistance Association, providing general legal assistance to poor and indigent clients. He is married to Lesley Anne Morgan Thompson and they have three (3) children.

The nominee joined the law firm Robinson & Cole following graduation from Yale Law School. During his initial years as a junior associate, the nominee divided his attention among several practice areas. As a member of the Connecticut Bar, the nominee took on both litigation and corporate assignments. His litigation experience extended to insurance defense and civil litigation. In addition, the nominee sharpened his advocacy talents by representing various business clients before the Office of Immigration and Naturalization Service. During that period he also handled political asylum and exclusion and deportation cases, appearing before administrative law judges where the opportunity presented itself. Beginning in 1981 and ending in 1984 the nominee handled summary process cases.

Since 1980 to the present time, the nominee has been involved in finance and corporate matters. He has represented several businesses in matters involving financing, acquisitions, and other corporate matters. He became a partner in the firm January 1, 1985. Subsequently, he was appointed to head the firm's business section. In September of 1991 he was elected managing partner of the firm.

Beyond his practice, the nominee continues to devote a significant amount of time to public service organizations and community activities.

## INTEGRITY

As a rule, one criterion cited and required of a judge is the possession of the moral integrity and fiber to perform the tasks required by the position. When assessing the nominee, the Committee determined the most significant characteristics that exemplify

The Honorable Joseph R. Biden Jr.  
 Committee on the Judiciary  
 September 30, 1994  
 Page 4

strong integrity. Integrity incorporates the normative body of ethics and morals followed by the legal profession. The concept of integrity invokes the image of one who strictly follows a particular code or "standard of values." In that way, integrity encompasses not only the value system of which it is a part but also a steadfast compliance with these values. Within the legal context, the idea of integrity not only embraces a strong, independent moral conviction but also the courage to rule according to the law and legal principles involved. To that end, a judge must be an independent thinker guided by a sound set of principles.

The reports suggest that an overwhelming majority of those people interviewed commented most favorably on the nominee's integrity. The comments regarding the nominee's general reputation were enthusiastically positive. The nominee enjoys a sound reputation as a sincere, moral, upstanding member of both the legal and nonlegal community. The nominee received repeated praise for his moral forthrightness, and his steadfastness to sound ethical principles. Moreover, the nominee received praise not only for his dedicated work ethic but also for his ability to incorporate these standards into everyday life. These comments were made by both members of the legal community and members of the nonlegal community. His positive attitude and ethical practices clearly point to an individual of the utmost courage and sound principles. Moreover, the nominee stated that he looked forward to the challenge of managing the balance between upholding established jurisprudence and pressing forward on novel issues of first impression.

The Committee is satisfied that the nominee exemplifies the highest standard of integrity, and the Committee accordingly concludes that the nominee possesses the high integrity and moral fiber befitting of this position.

#### JUDICIAL TEMPERAMENT

The rigors of courtroom practice require a captain at the helm who remains calm and levelheaded while in the midst of the tempest. A judge must exhibit not only strong moral fiber, but also a respectful, calm, diplomatic nature capable of maintaining the courtroom decorum in spite of the contentious atmosphere generated by the matter before the judge. In addition, the judge must be capable of listening to the attorneys as well as learning from the attorneys the nature of their arguments.

The Honorable Joseph R. Biden Jr.  
 Committee on the Judiciary  
 September 30, 1994  
 Page 5

The nominee received extremely high accolades in this particular category. The nominee's colleague's consistently praised him for his calm even-tempered management of the office. Moreover, some colleagues cited the well-managed expansion of the firm into Boston, Massachusetts as an example of the aplomb, tact, and consideration exemplified by the nominee. Moreover, attorneys who had worked with the nominee on several complex transactions involving multiple parties consistently commended the nominee's equanimity in handling complex negotiations. From the reports gathered, it is readily apparent that the nominee's articulate manner of pressing forward on difficult issues, and his ability to listen to all parties while moving forward to the objective clearly constitute key ingredients in his general approach to dealing with both colleagues, opponents, clients, and the general community.

After considerable investigation the Committee is satisfied that the overall existing evidence of the nominee's appropriate conduct and suitable temperament suitably lends support to a conclusion that the nominee has the requisite temperament for a seat on the bench. The Committee concludes that the nominee possesses a highly suitable temperament for judicial service.

## PROFESSIONAL COMPETENCE

### *Key Considerations*

Professional competence in the context of a trial judge encompasses not only familiarity with the courtroom and substantive knowledge, but also mental acuity, adroitness, and amplitude. These attributes embrace the benefits bestowed by experience, hard work, and contact with a wide and diverse body of stimuli. Traditionally, litigators and trial attorneys have received the lions' share of appointments to the bench, based upon a somewhat valid assumption that trial experience was significant preparation for the bench. The nominee, as a corporate attorney and managing partner of a firm with a strong litigation group brings to bear some unique skills to the bench. As a general rule, the world of the nominee primarily consists of corporate boards, documents, drafting, and negotiations as opposed to the drama of the courtroom. As managing partner of a large law firm, however, the nominee has had the opportunity to supervise both the corporate attorneys and the litigators and trial attorneys within the firm. Within this particular crucible, the nominee has had the benefit of observing simultaneously, two disparate worlds within the legal field. From the reports collected, there can be no doubt that such experiences have provided the nominee with a

The Honorable Joseph R. Biden Jr.  
 Committee on the Judiciary  
 September 30, 1994  
 Page 6

well-rounded view and respect of the legal profession as a whole. To bring these skills into focus, we have particularly scrutinized the experience of the corporate lawyer and how this experience can prove an asset on the bench.

### *Negotiation Skills*

One particular talent a judge must hone as he sits on the bench is the ability to listen to the attorneys before him and assess the information gathered during the course of the proceedings. This skill is particularly useful during the various stages at trial where motions must be granted or denied quickly and succinctly. The mechanics of negotiations require the corporate attorney to become a consensus builder and tactician in order to bring about the desired results. The reports collected suggest that the nominee consistently received praise for his communication skills and his ability to construct a consensus, particularly within the context of negotiations. The basis for the comments appears to rest upon his ability to listen to those who come to the table, to analyze and synthesize the information gathered, and formulate a plan of action based upon the focus of the meetings. This skill is no different from those utilized by a judge who has to make and write decisions.

### *Substantive Legal Knowledge*

In addition to strong communication skills, as a negotiator the nominee brings a diverse substantive knowledge and exceptional analysis skills to the bench. The nominee has had vast experience negotiating and documenting various complex financing arrangements as the backbone for significant construction projects. This has entailed not only an understanding of the interaction of various abstract financial concepts and a keen appreciation of various financing arrangements and vehicles, but also detailed knowledge of corporate law, the law of contracts, property and other substantive areas. Moreover, a strong corporate practice also requires an eye for potential litigation existent in all transactions. The reports indicate that the nominee has a reputation as being able to quickly take in and draw upon a broad base of legal constructs. The Committee strongly believes that nominee's ability to master cogently and effectively diverse substantive areas indicate his ability to handle a variety of complex substantive matters relating to securities, antitrust, patents, trademarks, and other sophisticated practices.

The Honorable Joseph R. Biden Jr.  
Committee on the Judiciary  
September 30, 1994  
Page 7

#### *Management Skills*

The reports consistently cited the nominee's management skills as a particular strong suit. The nominee received considerable praise for his ability to listen to the concerns of his colleagues and his ability to manage a large staff, a large budget in a downsizing economy. Moreover, some respondents cited the nominee's ability to set a course of action for the firm in terms of its growth, charting a course for more minority representation and retention, and the development of various practice areas and closure to low growth areas. These skills require the exercise of considerable judgment. The nominee will bring these skills to a judicial system that is underbudgeted and overworked. In addition, the comments received indicate that the nominee has been able to lift and maintain the morale and attitudes of those around him even in the midst of some skepticism and under difficult circumstances. The Committee believes that the nominee's ability to build a consensus, to work with people and empower them to complete the job will serve him well in a litigious arena where terms such as "cooperation," "decorum," "respect," and "courteousness" are sometimes relics of a bygone era. It is our firm belief that the nominee will bring dignity to the bench and the legal field as a whole.

#### *Community Contacts*

As an active member of a number of public service and bar organizations, the nominee has had substantive contact with both the legal community and general populace. The comments received underscore the nominee's intelligence, analytic and listening skills, and his ability to empower people to lift themselves out of difficult situations. This ability to energize and invigorate the community at large will also serve him well as he ascends to the bench. As a judge, he will be a role model for both the legal community and the general public. This Committee believes that the nominee will set a standard by his participation in the legal process at this level, and by example he will provide the community with a standard model for the legal community.

After considerable investigation the Committee is satisfied that the nominee meets the highest standard of professional competence befitting of this position and concludes that the nominee exhibits the level of professional competence for a seat on the bench.



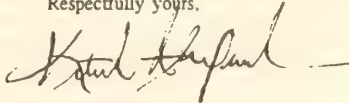
The Honorable Joseph R. Biden Jr.  
Committee on the Judiciary  
September 30, 1994  
Page 8

### CONCLUSION

As stated at the outset, the Committee consulted with a wide variety of people and materials in order to prepare this thorough and exhaustive assessment of the nominee's qualifications. The information recovered during the course of this investigation has been summarily presented in this report. The original sources and materials remain the confidential property of the NBA, and thus will not be disclosed to the public. The Committee concludes that the nominee has both the professional experience and the requisite qualities sufficient to place him at the top of the legal profession. Therefore, the Committee unanimously concludes that the nominee meets the Committee's Well Qualified standard.

On behalf of our Committee, it has been an honor to participate in the nomination and confirmation process of Alvin W. Thompson to the District Court of the United States for the District of Connecticut.

Respectfully yours,

A handwritten signature in dark ink, appearing to read "Koteles Alexander", with a long horizontal flourish extending to the right.

Koteles Alexander

## APPENDIX

National Bar AssociationJudicial Selection Evaluation Guidelines

**Judicial Temperament.** Temperament refers to the nominees capacity and inclination to treat litigants with impartiality, sensitivity, courtesy, patience, and a commitment to the concept of simple justice. Yet, all of these attributes must be balanced with decisiveness within the pressures of the courtroom.

**Integrity.** Integrity rests not only at the foundation of our legal system, but also strikes at the heart of our political system. Therefore, integrity is viewed in terms of moral and ethical behavior as well as complete respect for our democratic form of government and the judicial role in our society.

**Professional Competence.** As mentioned previously, professional competence is defined in terms of qualities such as intellectual capacity, judgment, writing, analytical ability, industry, knowledge of the law, decisiveness, community contact, social awareness, speaking ability, and the ordinary citizen's perception of the nominee. These attributes are evaluated within the context of the professional experience of most minority lawyers.

*Writing, Intellectual Capacity, and Knowledge of the Law.* These qualities encompass and require a solid understanding of the law and its application. Moreover, these attributes demand an ability to communicate in a clear fashion the decisions of the court.

*Professional Experience.* Professional experience takes into consideration the experiences of attorneys, which may take a variety of pathways. This criterion accords full recognition of experiences gained not only from the rigors of private practice, whether as a sole practitioner or with a law firm, but also the rigors of public service and academic experiences. Emphasis is placed on experiences which provide substantive training (either in terms of development of writing, analytical skills, deliberative skills, etc.).

*Community Contacts.* Community contacts gives recognition to the role the judicial system plays within the community. Judges are in a position to enhance the public's view of the court. They are the human embodiment of the concept of justice. As such the nominee must be perceived by the community as someone they trust literally with their lives, money, and property.

*Social Awareness.* Justice Cardozo said in his lectures on The Nature of the Judicial Process, "the great tides and currents which engulf the rest of men do not turn aside in their course and pass the judges by." Judicial decisions, although germane to the parties before the court, affect the entire judicial universe because perforce they must sometimes delve into the realm of social or public policy. It is useful therefore that prospective nominees have some familiarity with and sensitivity to the range of social issues that often confront the courts.

*Speaking Ability.* This quality highlights a basic -- and often overlooked -- aspect of a judge's role. A trial judge must know how to communicate verbally in order to be understood by those appearing before the bench as well as those who serve as jurors. In short, this attribute requires ability to communicate effectively with people from all walks of life without offending their sensibilities or appearing condescending.

In an effort to facilitate comprehension of the NBA report and its conclusion, the Committee will employ a rating system similar to that of the ABA. The Committee reluctantly acquiesces to incorporating this antiquated method of evaluation. The Committee does so only because most judicial evaluators are familiar with and wedded to the ABA tradition. Consequently, the Committee will use the same evaluation concepts.

*Well Qualified.* The Committee issues this rating to the nominee who is an outstanding member of the legal profession. The nominee must exhibit superior ability in: intellectual capacity; writing; analytical skills; industry; diligence; knowledge of the law; and professional experience. Moreover, the nominee must demonstrate the highest reputation for integrity and temperament. Also, the nominee must have made significant contributions to both the community and the legal profession.

*Qualified.* The Committee issues this rating to the nominee who is an outstanding member of the legal community, and is well suited to perform the duties required by the position. The nominee must not only demonstrate the ability to satisfactorily meet all the requisite standards and criteria for the position, but also exhibit a high reputation for integrity and temperament.

*Not Qualified.* The Committee issues this rating to the nominee who is unable to satisfactorily meet the minimum standards for each of the criterion required by the position.



**NOMINATIONS OF DIANA E. MURPHY, TO BE  
U.S. CIRCUIT JUDGE; SVEN E. HOLMES,  
VICKI MILES-LaGRANGE, WILLIAM H.  
WALLS, ELAINE E. BUCKLE, AND ROBERT W.  
GETTLEMAN, TO BE U.S. DISTRICT JUDGES**

---

**TUESDAY, OCTOBER 4, 1994**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.***

The committee met, pursuant to notice, at 4:35 p.m., in room 226, Dirksen Senate Office Building, Hon. Paul Simon presiding.  
Also present: Senator Moseley-Braun.

**OPENING STATEMENT OF SENATOR SIMON**

Senator SIMON. The hearing will come to order. I see some of my distinguished colleagues here. We usually in our committee try to take them in order of their arrival. I don't know which one of the Senators arrived first.

Senator LAUTENBERG. Do you trust us? It was a tie coming in the door.

Senator WELLSTONE. We are not doing this by seniority? I love this.

Senator SIMON. David Durenberger pointed to Paul Wellstone.

Senator WELLSTONE. Mr. Chairman, if you are going to start with Minnesota, I will follow the senior Senator, if that is all right.

Senator BOREN. To be honest with you, Senator Wellstone was the first one here.

Senator SIMON. Senator Wellstone being the first one here and going strictly on the basis of seniority in the Senate, we will call on Senator Wellstone first, and he is going to yield to his colleague.

Let me ask Judge Murphy if you will join Senator Wellstone and Senator Durenberger. We welcome you here, Judge.

Senator Durenberger, let me call on you first.

**STATEMENT OF HON. DAVE DURENBERGER, A U.S. SENATOR  
FROM THE STATE OF MINNESOTA**

Senator DURENBERGER. Thank you very much, Mr. Chairman, and Paul, thank you very much, and my colleagues. Thank you for letting me take just a couple of minutes to introduce a friend. I don't think she is a Republican; I still am. It is sort of an unusual situation I find myself in here, but I want to say about three or four things about Judge Diana Murphy.



No. 1, I didn't know her first as a judge. I think I first knew Diana Murphy when she was trying to decide whether she was going to be an educator or a lawyer. We met on the Minnesota Constitutional Study Commission way back when—I think it was 1970 when I was transitioning from one life to another.

But since then, she has made her mark on first the bar and now the bench. The next time we met was in 1979 or 1980. I was a brand new United States Senator. I never expected to be here and didn't know anything about the role we played in selecting judges.

Fritz Mondale from Minnesota was Vice President of the United States and President Jimmy Carter had to make two appointments to the Federal district bench. Fritz called up and said,

Dave, you know the way these things usually work is since the President is a Democrat, I could just sort of recommend to him two people I know in Minnesota who are Democrats. But you are a brand new Republican Senator and why don't we just decide that we will find the best Republican and the best Democrat in the State of Minnesota to serve on the trial bench. You decide who the best Republican is, because you couldn't trust me to do that, and vice versa.

We selected Bob Renner as the Republican and Diana Murphy as the Democrat.

But as Paul is learning and as I have known for the 16 years that I have been here and before that as a lawyer, we are so proud of the quality of people that we recommend to the President to be on the bench, the district bench and now the circuit bench in Minnesota.

Diana Murphy made it in 1979 not because she was a Democrat but because she was a very respected lawyer, and she has turned out to be the most well-respected, as well as gifted, trial judge. So this particular selection has my highest endorsement as well.

I have read some of her opinions, some of which I don't agree with, but I guess, unlike some of my Republican colleagues, I don't hold that against her. I find that there is something refreshing representing the diversity of lawyers and judges in Minnesota both at the trial level, the bench, and at the circuit court level.

The importance of this particular nomination to us in Minnesota really goes back to 1970, when a man whose life we celebrated last night, Harry Blackmun, was elevated from the Eighth Circuit Court of Appeals to the U.S. Supreme Court. Up until that time, Minnesota had always had two appellate court judges at the eighth circuit level. Since then, we have had only one.

To a lot of judges and a lot of lawyers, that makes a big, big difference. We have a huge caseload coming out of Minnesota and Harry Blackmun has always felt, through Democrat and Republican administrations, that by gosh, we ought to have another Minnesotan on the circuit court of appeals.

So last night as we celebrated his retirement from the U.S. Supreme Court, I was celebrating the opportunity that I would have to come today and to recommend to my colleagues a second Minnesotan and to thank the President for recommending Diana Murphy to, as we look at it, replace Harry Blackmun on the Eighth Circuit Court of Appeals.

Senator SIMON. Thank you, Senator Durenberger.  
Senator Wellstone.

**STATEMENT OF HON. PAUL D. WELLSTONE, A U.S. SENATOR  
FROM THE STATE OF MINNESOTA**

Senator WELLSTONE. Thank you, Mr. Chairman. I would like to thank Senator Durenberger for his very strong support.

Mr. Chairman, I think since there are a number of staff here and other people here that rather than speaking extemporaneously, because I will just sort of go on and on and on in a very glowing fashion, all of which Diana deserves, I want to be a little bit more formal and read from some things that I have put into writing. I will be very brief.

Judge Murphy really is your judge's judge. She has served with extraordinary distinction as U.S. district court judge and has acted again and again in a very thoughtful and forthright and courageous fashion.

What I find very compelling, and I believe that my colleagues find this compelling as well, is that Judge Murphy seems to be universally admired and supported by members of the practicing bar. I have yet to find one single voice—one single voice—in opposition to her candidacy for the Eighth Circuit Court of Appeals, which I think is just amazing.

Judge Murphy was the first woman to be appointed to the District Court for the District of Minnesota, and at the present time continues to be the only woman in that capacity, and she will be, if nominated and confirmed, and I certainly hope and believe that that will happen, the first woman to serve on the Eighth Circuit Court of Appeals.

Her demeanor and courtroom style in all respects personify the principles of courtesy and civility, and yet at the same time she is known for her sense of order and decorum. It is well understood by all involved that Judge Murphy always has control of her courtroom.

In addition, Judge Murphy, as I said before, has just tremendous support among her peers. From my point of view, it is important that judges not isolate themselves from community, and I could go on and on and I will include that in the record about her service to community, especially in education. But just for a moment, some of her national status as a jurist.

She is past president of the Federal Judges Association and past chair of the board of the American Judicature Society, two of the most prestigious organizations in the universe of American law. She continues to serve today as a member of the Board of the Federal Judicial Center, a member of the judicial council of the eighth circuit, and a member of the American Bar Association's Standing Committee on Judicial Selection. She has just a tremendous, if you will, résumé.

Let me just simply say that she is, without doubt, a most appropriate candidate for this vacancy at the circuit court of appeals level. I think it will be historically important, not just because she will be the first woman to serve on that court, which I think is important in and of itself, but because Diana Murphy, I think, combines the best of service to community with the best of being, as I said earlier, truly a judge's judge with tremendous respect among her peers.

This could not be a better nomination by the President, and I think with the support of Senator Durenberger and Senator Hatch and Democrats and Republicans alike, I certainly hope that she will be confirmed and we will get this done this session. Thank you.

Senator SIMON. I thank both of you. Judge Murphy, we will temporarily excuse both of you right now.

Judge MURPHY. Thanks to both the Senators for their nice comments and support.

Senator SIMON. Senator Lautenberg or Senator Boren, which one of you two arrived first?

Senator LAUTENBERG. Senator Boren.

Senator SIMON. Senator Boren did. All right.

Senator BOREN. Thank you very much.

Senator LAUTENBERG. He is the first to come and the first to go. [Laughter.]

Senator SIMON. If Ms. Miles-LaGrange will join Senator Boren, please. Senator Boren.

#### STATEMENT OF HON. DAVID L. BOREN, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator BOREN. Thank you very much, Mr. Chairman. I am pleased to have the privilege of introducing two outstanding nominees to the committee this afternoon. I am very pleased to have that privilege.

Two very outstanding Oklahoma attorneys have been nominated for district judgeships in our State, and even at their——

Senator SIMON. Excuse me. I did not acknowledge Mr. Holmes. I did not realize Oklahoma was really doing so well here today. [Laughter.]

Senator BOREN. Thank you, Mr. Chairman.

Let me say, even at their young ages, both of these nominees have extraordinary experience that will serve them well as Oklahoma's newest Federal judges. Both received the recommendation of a nominating commission composed of 13 Oklahoma attorneys, businessmen, and civic leaders with very broad and diverse backgrounds. I have utilized a commission to make recommendations to me so that I might make the best possible recommendations to the President. This commission has very broad representation and they spent many, many hours in their deliberations before making these recommendations to me.

Vicki Miles-LaGrange has been nominated for judgeship in the Western District of Oklahoma. She received her undergraduate education at Vassar, her law degree at Howard University, and then embarked on a remarkable legal career.

During the course of her career, she has worked as a law clerk for two different Federal judges, one in Oklahoma and one in Texas. She has been an attorney for the Department of Justice here in Washington. She served as assistant district attorney at the State level for Oklahoma County, in which our capital city is located, where she headed the enforcement of drunk driving laws and prosecuted several very serious sex crime and homicide cases successfully.



She has been in the private practice of law, concentrating in real estate law in particular. She has been an outstanding member of the Oklahoma State Senate, and during her time as a member of the State Senate she chaired the judiciary committee.

Finally, it was my privilege to recommend to the President that she be appointed as U.S. attorney for the Western District of Oklahoma, and she has been serving well and ably in that capacity.

I might mention that she has a number of friends and relatives here with her today. I don't know if I have a complete list. They are behind me, I know. It is a happy moment for them as well as for me, and I would like to ask them to stand. Present are her parents, Charles and Mary Miles; Gayle Miles-Scott, her sister; Johnna Rouse, her foster daughter; her niece, Brittany Scott; Christy Craft; her in-laws, Lloyd and Betty LaGrange; and her sister-in-law, Yvette McAfee; and our executive assistant U.S. attorney, Rozia McKinney Foster. She also has with her to show that those early in her life have a good opinion of her, her Vassar roommate Natalie Turner, who is here with her, and a host of other friends.

Senator SIMON. We don't dare vote against her. [Laughter.]

Senator BOREN. It is a real privilege for me to make this nomination. I have known Vicki Miles-LaGrange for some time. I have watched her with great admiration as a professional in the legal profession. I have watched her with great admiration as a public official. She sets an example of public service by the way she provides it herself and by the way that she leads her life.

I might say, Mr. Chairman and members of the committee, it gives me also special privilege to be here to introduce her here today and to express my pleasure at the President's nomination because this confirmation will make history in not only our State but also in the entire tenth circuit, as Ms. LaGrange, when confirmed, will become the first African-American to serve as Federal district judge or circuit judge in the entire history of the Tenth Circuit of the United States. It is a great privilege to be able to recommend to you a person of such ability and integrity and to also see this history made. We have great pride at being able to make that history from our State.

Sven Holmes, who is also here with me today, has been nominated for the northern district, to be judge of the Northern District of Oklahoma. He received his undergraduate education from Harvard, which is the only blot on his record that I know about, Mr. Chairman. [Laughter.]

He received his juris doctorate from the University of Virginia and his master's of law and taxation at Georgetown.

Sven Holmes, too, has mixed a brilliant legal career with public service, as noted by his work as administrative assistant in the office of the Governor of Oklahoma, and I might mention that was during my tenure as Governor of Oklahoma. He then served as a law clerk for a Federal judge, a very outstanding Federal judge in Tulsa. He then entered private practice with one of our State's leading law firms, the firm of Doerner, Stuart, Saunders, Daniel & Anderson in Tulsa, where he concentrated on civil litigation.

He then was lured to Washington, and I must confess that just as I was guilty of hiring him almost immediately out of college to

come and work in the Governor's office, I felt that I needed his help here in Washington and he served for a period of time as my tax counsel to the Senate Finance Committee. Then he became general counsel and staff director of the Senate Intelligence Committee during the time that I chaired that committee. He was our first staff director.

I might say, I came in during a very sensitive period of time. I had just inherited the chairmanship. We learned 2 days after I found out I would be chairman of the Iran-Contra affair and other very serious matters were before us. Mr. Holmes agreed to step back into public service and become the staff director for the Senate Intelligence Committee and the general counsel.

He not only served well and ably in that position, helping us to establish many of the mechanisms that we now have in place in the intelligence field, including audit units of our own and other major reforms in terms of the way that committee transacts its business, he also served as my designee to the Iran-Contra Committee, the joint committee on which I had the privilege of serving, so he represented me as my staff representative in that position as well.

Showing his versatility, he returned to private practice where he became, among other things, club counsel to the Baltimore Orioles, I might say during many of their winning seasons. Finally, he entered his present capacity as a partner at Williams & Connolly law firm here in Washington.

I think you can see, Mr. Chairman and members of the committee, why I am so proud to be able to present both of these nominees to you. They have had exceptional legal education. They both have had extensive experience in making of our laws and in the resolution of legal disputes. Both of them have dedicated much of their lives to public service.

Knowing them both personally as I do, I believe that I can say with confidence that they both consider public service the most satisfying part of their respective careers.

I believe these facts alone would qualify them for appointment, but I want to add that I believe both of these individuals possess another intangible quality that I consider equally important and which cannot be found in a résumé and that quality is judicial temperament. A trial judge must be able to approach the most emotional or complex matter in a way that is fair, evenhanded, open-minded, and without bias. I believe that both of these nominees possess this kind of character and I know they both appreciate the importance of being a fair and a very thorough judge.

Mr. Chairman and members of the committee, as you know, this is the last time that I will be able to testify before a congressional committee as a sitting Senator. I can think of no occasion which would make me happier to mark as my last appearance before any congressional committee as a sitting Senator than this particular occasion, which is marked by my opportunity to introduce to you Vicki Miles-LaGrange and Sven Holmes and to recommend their confirmation with great enthusiasm to the Federal bench.

I might say also that my colleague, Senator Nickles, had wished to be here today. He had an unavoidable conflict and he asked that



I convey to the committee his enthusiastic support of the confirmation of these two nominees as well.

Senator SIMON. Senator Boren, we thank you. Knowing you, I am confident you are going to be back here testifying as president of the University of Oklahoma, asking for some favors for the University of Oklahoma. [Laughter.]

Senator BOREN. Knowing both of the members of the committee who are here today and the good hearts that they have and the open minds they have, I know that I will receive a receptive audience when I come. [Laughter.]

Senator SIMON. We thank you very much and we temporarily excuse the two of you.

Senator Lautenberg, you have Judge Walls here.

I see Senator Chafee here. Did you wish to testify on behalf of any of the nominees?

#### **STATEMENT OF HON. JOHN H. CHAFEE, A U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. Thank you very much, Mr. Chairman. I will make this very brief.

I have known Sven Holmes, I suppose, for 20 years plus. He has been a longtime friend of our family and I just think he is outstanding. I knew him when he was in college. I knew him when he was in law school. I knew him when he was here helping Senator Boren on the Intelligence Committee and he has just done an outstanding job.

I would like to echo the kudos that Senator Boren and Senator Nickles were voicing for Sven Holmes. He is just outstanding and I think we would all be proud if he were to serve on the Federal district court.

Senator SIMON. Thank you, Senator Chafee.

Senator BOREN. Mr. Chairman, this is not the first time that Senator Chafee has saved me from embarrassment, but let me say, I introduced the family a moment ago of Vicki Miles-LaGrange and before I leave the podium, if it is appropriate, because of my long-time friendship with the family of Sven Holmes, I would like to introduce his family who are here with him today.

With him today are his spouse, Lois Romano, an outstanding journalist in this city; his daughters Kristen and Jenna; and his parents, Clifford and Ruth Holmes, who I might say are lifelong friends of mine and a great source of encouragement to me throughout my public service; and his mother-in-law, Eleanor Romano, who are all here. I appreciate the opportunity to be able to present them.

Senator SIMON. We welcome you all.

Senator Lautenberg, this is not a filibuster. You will get a chance to speak here.

#### **STATEMENT OF HON. FRANK R. LAUTENBERG, A U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator LAUTENBERG. We are going to take a few minutes, because I am proud and delighted to present Judge William H. Walls, sitting now on the superior court, to be supported for the District Court of New Jersey.

I commend all of my colleagues who made presentations of candidates for the bench. I was struck by the fact that a couple of them had in the same presentation made reference to their retirement. I don't intend to do that today. [Laughter.]

Mr. Chairman and Senator Moseley-Braun, I am delighted to be here because I recommended Judge Walls to President Clinton for this position after a thorough review of candidates with attorneys in the State, public officials, other judges, and citizens in general wherever we could communicate with them.

This is an individual who is one of superior intellect and integrity. He is just the type of jurist that we need in our Federal courts.

Mr. Chairman, a quick look at Judge Walls's sparkling credentials makes it clear that he is a first-rate jurist. But to me, Judge Walls is much more than that. To my mind, he represents the sense of commitment, the understanding of community and values that we all strive for in this great Nation. In my mind, his life has been the embodiment of the American dream.

Judge Walls grew up in a poor home in Atlantic City, NJ. His mother left when he was 2 and he was raised by a grandmother and a father who could not afford to send him to college, but Judge Walls did not let poverty get him down. He worked hard. He won a slew of academic scholarships. He sailed through Dartmouth College, where he was elected to Phi Beta Kappa, and he graduated from Yale Law School in 1957. We have some people from Yale in our present administration, distinguished scholars and so forth, and Judge Walls fits in the distinguished scholar category.

Over the years, he has found a way of giving something back to the community. He served as a reservist in the National Guard from 1957 to 1962. He served as corporation counsel and as business administrator for the city of Newark. He has had a variety of experiences and assignments, all of which he accomplished with great skill and support from those with whom he had contact.

He also volunteered his time to a number of community programs. One of the things that I found as I reviewed Judge Walls' credentials was a common view that he understood the people he was about to serve, be they rich, be they poor, be they black, be they white. He was considered by all who I talked to as someone who could relate to people's problems and be fair in the adjudication of their matters.

He served as a trustee in the Newark Museum, New Jersey Symphony. We shared that assignment together. He is a member of the National Advisory Council of the Urban Coalition and president of the board of trustees of a distinguished group called the Newark Boys' Choir.

He is a respected veteran in New Jersey's courts and was first appointed to the Essex County Court in 1977. The next year, he was elevated to the superior court. And in 1993, just recently, Judge Walls was promoted again, this time to the position of presiding judge of the superior court. His promotion to presiding judge is a recognition of his excellent service to the court and also the respect that he has earned from his colleagues on the bench.

For all of these reasons, William Walls is exactly the type of jurist that we need to promote as we work to increase public trust

and confidence in our legal system. He is widely respected by his peers and by the lawyers who appear before them. He is a man who knows firsthand about overcoming hardship in pursuit of the American ideal.

He will be a significant addition to our justice system and he will sit in the Martin Luther King Courthouse in Newark, NJ. He will be the first African-American male to sit on the District Court in our Third Circuit in the State of New Jersey.

I look forward to a swift and smooth confirmation process and I am grateful for the opportunity to appear before the committee and to present this outstanding candidate.

Senator SIMON. Thank you very much, Senator Lautenberg.

Judge we will temporarily excuse you.

I might mention, Judge, that I just got a note that Senator Bradley is tied up on the floor with another judicial nomination and is unable to attend but wanted to have his statement included.

Senator LAUTENBERG. Thank you, Mr. Chairman. He wanted me also to convey his regrets because he is fully supportive of Judge Walls' appointment. He wanted to be here, but there is a circuit court appointment that is underway.

[The prepared statements of Senators Lautenberg and Bradley follow:]

#### PREPARED STATEMENT OF SENATOR FRANK R. LAUTENBERG

Mr. Chairman, I am delighted to be here today to share my enthusiastic support of the nomination of Judge William H. Walls to the District Court of New Jersey.

I recommended Judge Walls to President Clinton for this position because I know him to be a man of superior intellect and integrity—just the type of jurist we need in our federal courts.

Mr. Chairman, a quick look at Judge Walls' sparkling credential makes it clear that he is a first-rate judge. But to me, Judge Walls is much more than that. In my mind, he represents the sense of commitment and values that we all strive for in this great nation. In my mind, he is the embodiment of the American dream.

Judge Walls grew up in a very poor home in Atlantic City, New Jersey. His mother left home when he was two. And he was raised by a grandmother and a father who could not afford to send him to college.

But Judge Walls did not let poverty get him down. He worked hard, he won a slew of academic scholarships, he sailed through Dartmouth College, where he was elected to Phi Beta Kappa, and he graduated from Yale Law School in 1957.

Over the years, Judge Walls has found all sorts of ways to give back to the community. He served as an Army National Guard reservist from 1957 to 1962. He has also served as Corporation Counsel and as Business Administrator for the city of Newark.

Judge Walls has also volunteered his time to a number of community programs, serving as trustee to the Newark Museum and New Jersey Symphony Orchestra, as a member or the National Advisory Council of Urban Coalition and as President of the Board of Trustees of the Newark Boy's Choir.

Judge Walls is a respected veteran in New Jersey's courts. He was first appointed to the Essex County Court in 1977. The next year he was elevated to the Superior Court.

In 1993, Judge Walls was promoted again—this time to the position of Presiding Judge of the Superior Court. Judge Walls' promotion to Presiding Judge is a measure of his excellent service to the court and also of the respect he has earned from his colleagues on the bench.

For all these reasons, Judge Walls is exactly the type of jurist we need to promote as we work to increase public trust and confidence in our legal system.

He is widely respected by his peers and by the lawyers who appear before him. And he is a man who knows first-hand about overcoming hardship in pursuit of the American ideal.

I look forward to a swift and smooth confirmation process.

Thank you.



PREPARED STATEMENT OF HON. BILL BRADLEY, A U.S. SENATOR FROM THE STATE OF NEW JERSEY

Mr. President, I rise to speak in support of the nomination of Judge William Walls to the United States District Court for the District of New Jersey.

Judge Walls is currently the Presiding Judge of the Essex County Superior Court. He has served on this court since 1978. He is a judge of superior intellect and sound judgement. Indeed, he is widely respected in New Jersey as a jurist with a deep commitment to justice and fairness.

Mr. President, Judge Walls was born in Atlantic City in 1932. He currently resides in the City of Newark. Judge Walls is a self-made man. He was raised by his grandmother and father after his mother left home when he was two years of age. From his meager beginnings, he became a Phi Beta Kappa graduate of Dartmouth College and a graduate of Yale Law School.

Judge Walls has an extensive background in litigation. From 1959 to 1962, he was in private practice litigating personal injury lawsuits. From 1962 to 1968, he served as an Assistant Corporation Counsel for the City of Newark. In 1970, he was appointed as the Newark Corporation Counsel.

Judge Walls was first appointed to become a judge of the Essex County Court in 1977. In 1978, he was elevated to the Superior Court of Essex County.

Judge Walls is a member of the New Jersey Bar, the New Jersey District Court Bar and the Third Circuit Court of Appeals Bar.

Mr. President, Judge Walls is committed to enhancing the quality of the bar. In 1984, Judge Walls served as a member of the New Jersey Supreme Court Committee on Judicial Education. In 1991, Judge Walls was a charter organizer of the C. Willard Heckel Inn of Court. The Inn is devoted to teaching the practice of criminal law by recruiting lawyers and judges to serve as instructors for newly admitted lawyers.

Mr. President, Judge Walls' extensive experience as a litigator and a jurist, and his deep commitment to the law indicate that he will make an excellent addition to the District Court for the District of New Jersey.

STATEMENT OF HON. PAUL SIMON, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator SIMON. Let me finally, for this introductory phase, ask Judge Bucklo and Mr. Gettleman to proceed to the witness table.

First of all, if I may welcome them, and before I call on my colleague, say that in determining how we would proceed, first of all, I decided that I would share the responsibility for selecting judges with my colleague and I established commissions, in all three districts in my State, to review anyone who was interested or who was suggested.

That commission process, I believe—and I say this to my colleagues who may not feel comfortable with the process that they have—has served our State very, very well. We have ended up with diversity. We have ended up with quality. In the northern district, for example, we now have filled two vacancies. We had 138 people apply. We received just excellent reports from everyone about the two nominees here today, but real candidly, I don't believe I had ever met either of them before we interviewed them. The process really worked to bring out quality.

With those brief remarks, let me turn it over to my colleague, Senator Carol Moseley-Braun.

STATEMENT OF HON. CAROL MOSELEY-BRAUN, A U.S. SENATOR FROM THE STATE OF ILLINOIS

Senator MOSELEY-BRAUN. Thank you very much, Senator Simon. Old habits die hard. I came into the room and momentarily thought that I was here as a member of the committee to chair this hearing when, in fact, I was here to introduce Elaine Bucklo and

Robert Gettleman, so I changed sides of the podium, if you will, to make these introductions.

Senator SIMON. But she will get to vote before this is through, I want the two of you to know.

Senator MOSELEY-BRAUN. Mr. Chairman, I am proud to be here today to introduce to this committee two outstanding nominees to the U.S. District Court for the Northern District of Illinois, Elaine Bucklo and Robert Gettleman.

I am even prouder to be able to say that I played a part in selecting these nominees and I am grateful to you, my senior Senator, for establishing a merit selection committee for our State's judicial selection process. I think your comments were very well taken. I certainly associate myself with your remarks. The process has worked well for our State. It has worked well for the judiciary in our State and we have before you today two outstanding nominees who are here based on merit and on the fact that they have been recognized by their peers as outstanding candidates for the Federal judiciary.

Mr. Chairman, as the committee proceeds in these matters in alphabetical order, I will begin with the nomination of Elaine Bucklo, who currently serves as a U.S. magistrate judge for the Northern District of Illinois. If confirmed, and I believe that she will be, Magistrate Bucklo will bring a unique background to the Federal bench.

After graduating with a degree in English from St. Louis University, Magistrate Judge Bucklo taught grade school and Head Start programs in the Chicago Catholic and public schools. In 1969, she began law school at Northwestern University, where she was awarded a scholarship from the Women's Bar Association, which is given annually to the "outstanding woman law student in Illinois." She served as articles editor for the "Northwestern Law Review" and graduated magna cum laude in 1972, so we were on opposite sides of town coming out of law school at the same time.

Upon graduation, she served as a law clerk to Judge Robert Sprecher of the Seventh Circuit Court of Appeals before joining the San Francisco law firm of Morrison & Foerster. In 1974, she realized the error of her ways and came back home to Illinois, serving first as an associate and then as a partner in the Chicago firm of Devoe, Shadur & Krupp.

In 1978, a stint as a visiting professor at the University of California at Davis again took her away from Chicago, but she returned in 1980, first joining the firm of Coin, Crowley & Nord and then starting her own practice. In 1985, she was selected by the judges of the Northern District of Illinois to serve as a U.S. judge magistrate for that district, an appointment I believe demonstrates the high respect that Magistrate Judge Bucklo enjoys among her peers.

She serves in that capacity to this day and has proven so capable at the job that she is often asked to handle the most difficult cases. Despite a caseload that is 60 percent larger than that handled by the average magistrate, her docket remains current, and so I am confident that she will have no problem at all handling the workload of the Federal bench.



Indeed, her experience as a magistrate judge will serve her well on the district court, having already exposed her to a wide range of issues she will face as a judge. Her work as a member of the Civil Justice Reform Act Advisory Group for the Northern District has also familiarized her with the problems of delay in Federal litigation and given her an opportunity to propose methods to reduce delay and costs to litigants.

Her full legal agenda has not kept Magistrate Judge Bucklo from getting involved in a wide range of activities throughout the community. She volunteers at Deborah's Place in Chicago, a shelter for homeless women, and tutors at Jobs for Youth in Chicago, helping prepare high school dropouts to take their GED exams. She and her husband sponsor a high school student through LINK Unlimited, an interracial organization that is dedicated to help motivate minority students to finish high school and college with both moral support and financial assistance.

As a matter of fact, and if I may digress to tell a story that I know even Judge Bucklo doesn't know, I have a lady that I run into shopping at the hardware store all the time and she came up to me and said, "I sure hope you will support Judge Bucklo because she has been just wonderful working with the youth in our community." I can never remember her last name; we are just on a first-name basis and we see each other at the hardware store all the time.

But she had great things to say about you and I had no idea at the time that she knew that you were even up for a judgeship. Apparently you have done some things with the youngsters in her community and she came up to tell me what a great judge you were and what a great human being you are. I feel comfortable with the decisions of our committee as a result of that.

As president of the Federal Bar Association, Magistrate Bucklo helped raise over \$30,000 for scholarships for minority law students and sponsored a 3-day conference for members to explore the history of African-Americans and minorities in the Federal judiciary.

Again, I think that she is a quality nominee on all counts and I urge her confirmation by the committee and by the full Senate.

Mr. Chairman, if I may, I would like an opportunity for Magistrate Bucklo to introduce her family to the committee at this time.

Senator SIMON. Yes.

Judge BUCKLO. I would like to introduce my husband, Ken Eichenold, and my daughter, Noelle Eichenold, and my son, Alex Eichenold. They are someplace there. I have several friends here as well, Susan Haddad, who has come out from Chicago; my friend from the time I clerked, Maggie Frailie from here in town; and two others who have come here. Tom Hnatowski from the Magistrate Judges' Division is also here.

Senator SIMON. We welcome you all.

Senator MOSELEY-BRAUN. Thank you.

Mr. Chairman, I am also pleased at this time to be able to introduce an equally distinguished nominee, Mr. Robert Gettleman, also to serve as U.S. district judge for the Northern District of Illinois. Mr. Gettleman is a cum laude graduate with a degree in finance

from Boston University and a cum laude graduate of Northwestern University School of Law. I won't hold that against him, either.

Upon graduation from law school, he served as a law clerk, first to Judge Castle and then to Chief Judge Luther Swygert, both of the Seventh Circuit Court of Appeals. Upon finishing his clerkships, Mr. Gettleman joined the firm of D'Ancona & Pflaum in Chicago, where he is currently a partner and head of the litigation division.

During his tenure with the firm, Mr. Gettleman has handled a wide variety of civil litigation cases ranging from ERISA law, trademark and copyright laws, securities fraud, real estate and land use, and employment contracts, to name just a few. Despite the fact that his practice is primarily in civil litigation, he has gained a great deal of insight on the criminal justice system through his service on the John Howard Advisory Council on Prison Reform.

Throughout his legal career, Mr. Gettleman has devoted approximately 15 percent of his time to pro bono legal assistance. He handled a lawsuit against the Chicago Transit Authority which forced the CTA to use wheelchair lifts on buses long before the passage of the Americans with Disabilities Act. Mr. Gettleman has stated that he considers this case, heard before the Illinois Human Rights Commission, to be his greatest achievement as a lawyer. I would certainly agree with that assessment, and certainly thousands of Chicagoans were and are a great deal better off as a result of Mr. Gettleman's decision to take that case.

He has served as commissioner of the Illinois Guardianship and Advocacy Committee, which both serves as guardian of last resort to the developmentally disabled and mentally ill and elderly infirm individuals and provides legal advocacy for the disabled, and as commissioner for the Governor's Commission to Revise the Mental Health Code of Illinois.

He is a board member of Access Living of Metropolitan Chicago, a nationally recognized disabled rights organization, where he is helping to develop an enforcement program designed to promote compliance with the Americans with Disabilities Act and similar legislation.

Mr. Chairman, as you are well aware, our judicial selection committee conducts a great deal of analyses of all applicants for judicial vacancies before forwarding the names to us for review. In reviewing Mr. Gettleman's qualifications, I was particularly struck by a comment that he made that I would like to reiterate to the committee today.

He stated in that questionnaire,

I have learned that most civil litigation can and should be settled. Most of those cases that cannot should be decided by an alternative dispute resolution. I believe the judiciary should play a more active role in convincing and assisting parties to submit to ADR.

Mr. Chairman, at a time when our Federal district courts are facing overwhelming caseloads and incredible backlogs, I find Mr. Gettleman's statement to be very encouraging. In my opinion, it demonstrates that he will be an active manager of his caseload and will keep in mind the fact that, for many, justice delayed is often justice denied.



Mr. Chairman, as you well know, both of these nominees will make outstanding additions to the Federal courts. They will bring to the bench a rich history of involvement, not just in the law but in education and public service, qualities that enhance any judge.

I am honored and delighted to introduce Elaine Bucklo and Robert Gettleman here today and I certainly hope that the committee and the full Senate will act quickly before we adjourn, whenever that will be, on their nominations.

I ask, Mr. Chairman, that a full copy of my statement be accepted for the record.

Senator SIMON. It will be entered in the record, and I share your hope that we will confirm all of these nominees quickly, and that we will conclude here quickly.

[The prepared statement of Senator Moseley-Braun follows:]

PREPARED STATEMENT OF SENATOR CAROL MOSELEY-BRAUN

Mr. Chairman, I am proud to be here today to introduce the Judiciary Committee two outstanding nominees to the U.S. District Court for the Northern District of Illinois: Elaine Bucklo and Robert Gettleman. I am even prouder to be able to say that I played a part in selecting these nominees, and I am grateful to my senior Senator, Senator Paul Simon, for given me the opportunity to do so.

As the committee proceeds in these matters in alphabetical order. I will begin with the nomination of Elaine Bucklo, who currently serves as a U.S. Magistrate Judge for the Northern District of Illinois.

If confirmed—and I am confident she will be—Magistrate Judge Bucklo will bring a unique background to the Federal bench. After graduating with a degree in English from St. Louis University, Magistrate Judge Bucklo taught grade school and head start programs in Chicago catholic and pubic schools. In 1969 she began law school at Northwestern University, where she was awarded a scholarship from the Women's Bar Association, given annually to the "Outstanding Women Law Student in Illinois." She served as articles editor for the Northwestern Law Review, and graduated Magna Cum Laude in 1972.

Upon graduation, she served as a law clerk to Judge Robert Sprecher of the Seventh Circuit Court of Appeals before joining the San Francisco Law Firm of Morrison & Forestor. In 1974 she realized the error of her ways and returned to Illinois, serving first as an associate and then as a partner in the Chicago firm of Devoe, Shadur and Krupp. In 1978 a stint as a visiting professor at the University of California at Davis again took her away from Chicago, But she returned in 1980, first joining the firm of Coin, Crowley & Nord, then starting her own practice.

In 1985 she was selected by the judges of the Northern District of Illinois to serve as a U.S. judge magistrate for that district, an appointment I believe is a great testament to the respect Magistrate Judge Bucklo enjoys among her peers. She serves in that capacity to this day, and has proved so able at the job that she is often asked to handle the most difficult cases. Despite a caseload that is 60 percent larger than the average magistrate, her docket remains current, so I am confident she will have no problem handling the workload of the Federal bench. Indeed, her experience as a magistrate judge will serve her well on the district court, having already exposed her to a wide range of issues she will face as a judge. Her work as a member of the Civil Justice Reform Act Advisory Group for the Northern District of Illinois has also familiarized her with the problems of delay in Federal Litigation, and given her the opportunity to propose methods to reduce delay and costs to litigants.

Her full legal plate has not kept magistrate judge Bucklo from getting involved in a wide range of activities throughout the community. She volunteers at Deborah's Place in Chicago, a shelter for homeless women, and tutors at Jobs for Youth in Chicago, helping prepare high school dropouts to take their GED exam. She and her husband sponsor a high school student through LINK Unlimited, an interracial organization dedicated to helping motivate minority students to finish high school and college, with both moral support and financial assistance. As president of the Federal Bar Association, she helped raise over \$30,000 for scholarships for minority law students, and sponsored a 3-day conference for members to explore the history of African-Americans and minorities in the Federal judiciary.

Mr. Chairman, I am also pleased at this time to be able to introduce an equally distinguished nominee, Mr. Robert Gettleman, also to serve as a U.S. District judge for the Northern District of Illinois. Mr. Gettleman is a cum laude graduate with

a degree in finance from Boston University, and a cum laude graduate of Northwestern University School of Law. Upon graduation from law school he served as a law clerk, first to Judge Leatham Castle, then to Chief Judge Luther Swygert, both of the Seventh Circuit Court of Appeals. Upon finishing his clerkships, Mr. Gettleman joined the firm of D'Ancona & Pflaum in Chicago, where he is currently a partner and the head of the litigation department.

During his tenure with the firm, Mr. Gettleman has handled a wide variety of civil litigation cases ranging from ERISA law, trademark and copyright law, securities fraud, real estate and land use, and employment contracts—to name just a few. Despite the fact that his practice is primarily in civil law, he has gained a great deal of insight on the criminal justice system through his service on the John Howard Advisory Council on Prison Reform.

Throughout his legal career, Mr. Gettleman has devoted approximately 15 percent of this time to pro bono work. He handled a lawsuit against the Chicago Transit Authority which forced the CTA to use wheelchair lifts on buses long before the passage of the Americans with Disabilities Act. Mr. Gettleman has stated that he considers this case, heard before the Illinois Human Rights Commission, to be his greatest achievement as a lawyer. I would agree with that assessment, and certainly thousands of Chicagoans were—and are—a great deal better off as the result of Mr. Gettleman's decision to take that case.

He has served as commissioner of the Illinois Guardianship and Advocacy Committee, which both serves as guardian of last resort to developmentally disabled and mentally ill and elderly infirm individuals, and provides legal advocacy for the disabled, and as commissioner of the Governor's Commission to Revise the Mental Health Code of Illinois. He is a board member of Access Living of Metropolitan Chicago, a nationally recognized disabled rights organization, where he is helping to develop and enforcement program designed to promote compliance with the Americans with Disabilities Act and other similar legislation.

Mr. Chairman, as you are well aware, our judicial selection committee conducts a great deal of analysis of all applicants for judicial vacancies before forwarding the names to us for review. In reviewing Mr. Gettleman's qualifications, I was struck by a comment he made that I would like to repeat to the committee today. He stated: "I have learned that most civil litigation can and should be settled. Most of those cases that cannot should be decided by a alternative dispute resolution . . . I believe that the judiciary should play a more active role in convincing and assisting parties to submit to ADR."

Mr. Chairman, in a time when our Federal district courts are facing overwhelming caseloads and incredible backlogs, I find Mr. Gettleman's statement to be very encouraging. In my opinion, it demonstrates that he will be an active manager of his caseload and will keep in mind the fact that, for many litigants, justice delayed is often justice denied.

Mr. Chairman, as you well know, both of these Nominees will make outstanding additions to the Federal courts. They will bring to the bench a rich history of involvement not just in the law, but in education and public service, qualities that enhance any judge. I am proud to introduce Elaine Bucklo and Robert Gettleman here today, and I certainly hope that the committee and the full Senate will act quickly—before we adjourn—on their nominations.

**Senator MOSELEY-BRAUN.** Mr. Gettleman, did you have family members here that you would like to introduce?

**Mr. GETTLEMAN.** I do, Senator. My wife, Joyce, is here. I am very proud to have her here, my wife of 30 years. My son, Jeff, couldn't be here because he is at Oxford on a Marshall Scholarship that he just began. My daughter just began medical school at Stanford, so she can't be here, either, but I am bragging about them now on the congressional record.

**Senator MOSELEY-BRAUN.** It is OK.

**Mr. GETTLEMAN.** I do have two cousins here, both of whom work for the government. Will Friedman is back there somewhere. He is an attorney with the NLRB. And Daniel Zwelling works for Senator Boxer, and he is here. Finally, I have a former colleague from D'Ancona & Pflaum, an associate with whom I tried a case not too long ago who recently moved here to work in Washington. Bonnie Kartzman is also here. Thank you.



Senator SIMON. We thank you. I thank my colleague, and I will temporarily excuse the two of you.

I would ask all six nominees if you will stand where you are and raise your right hand. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you, God?

Judge MURPHY. I do.

Judge BUCKLO. I do.

Mr. GETTLEMAN. I do.

Mr. HOLMES. I do.

Ms. MILES-LAGRANGE. I do.

Judge WALLS. I do.

### TESTIMONY OF DIANA E. MURPHY, MINNEAPOLIS, MN, TO BE U.S. CIRCUIT JUDGE FOR THE EIGHTH CIRCUIT

#### QUESTIONING BY SENATOR SIMON

Senator SIMON. Judge Murphy, the court of appeals gets precedence here. I am pleased to say that we have, so far as I know, six noncontroversial nominees, so the hearing should be a brief one here.

Judge Murphy, on the court of appeals you will have to, from time to time, rule. I heard Senator Durenberger say he disagreed with some of your opinions. You are going to have to rule sometimes in ways that differ with your philosophy. I am sure it has happened in the past, and I am sure it will happen again. How do you handle that?

Judge MURPHY. Senator Simon, I have been a judge for 18 years, and I follow the law as set by the higher courts and by the legislative bodies. Sometimes it might not be the law that if I were a legislator, I would enact, but I have no problem with that.

Senator SIMON. You mentioned laws as set by the legislature, or the legislative body. There is one member of the Supreme Court who says legislative intent is meaningless. That is not the majority opinion of the U.S. Supreme Court, and you have already indicated you will follow what the court says.

What is your feeling? This is just a philosophical question, not how you will rule. Is legislative intent meaningless or is it a meaningful thing?

Judge MURPHY. I think it is meaningful. I think Justice Scalia, of course, would say the general principle that everyone would agree with, and that is that if the meaning of the statute is plain on its face, you apply that. But many times, it isn't that clear on its face and then you have to go back and look at the legislative history and try to determine the legislative intent.

Senator SIMON. One of the things that occasionally comes up here is the whole question of what are called frivolous lawsuits. Are there ways that we can discourage frivolous lawsuits?

Judge MURPHY. Yes, there are. There are some that exist now, and as you know, Senator, there are others that are being discussed. One of the ways that the courts may discourage it is with the use of rule 11. If a lawsuit is brought with no factual basis or no arguable legal basis, sanctions and cost may be assessed under rule 11.



Senator SIMON. Judge Murphy, you did not get a chance to introduce any relatives or friends you may have here. Would you like to do that at this point?

Judge MURPHY. I would, thank you very much, Mr. Chairman. One of my sons is able to be here, John Murphy. I have two nieces here, and I hope they will stand, Georgia Murphy Johnson, and I think her son, William, is with her, and Cecily Murphy Majerus. Then my friend, Diane Gibson, is here with her daughter, Katherine Gibson. Then my former law clerk, Beth Coombe, is also here.

Senator SIMON. It looks like your niece's son is skipping school today here. I think we are going to have to report you to the authorities, young man. [Laughter.]

Let me thank you, and let me just add that this morning, Senator Wellstone said to me, "We really have a great nominee". I want you to know I won't hold that against you, Judge Murphy. I think highly of Senator Wellstone and his opinions on these things. We thank you very much and wish you the best.

Judge MURPHY. Thank you, Senator.

# TESTIMONY OF SVEN E. HOLMES, WASHINGTON, DC, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OKLAHOMA

## QUESTIONING BY SENATOR SIMON

Senator SIMON. Mr. Holmes, you heard my colleague quote Mr. Gettleman, saying that we ought to use alternative dispute resolution more. I think by any gauge, we are an excessively litigious society. Have you reflected on this area at all?

You have been on the lawmaking side of things and now you will be on the judicial side. Are there ways that we can encourage, without denying people opportunity, are there ways that we can encourage less litigation?

Mr. HOLMES. Yes, Mr. Chairman, I believe that there are. Certainly, every mechanism available to a district judge should be explored, whether it be through looking into mediation, looking into alternative dispute resolution, better use of the magistrates for those purposes.

But I think that the most important thing that a district judge can do is to be very much on top of his or her docket from the outset. As a case comes in, if you immediately become familiar with the case and that the lawyers are well aware that the judge is knowledgeable about the facts, it is in that stage that you can most actively participate in encouraging resolution of the case by settlement. There can be no question that a little more time spent at the beginning can save a great deal of time in avoiding a costly and lengthy lawsuit.

Senator SIMON. The American Bar Association, among other things, has suggested that judges should have some background in terms of pro bono work. I remember a nominee for the Supreme Court telling us very candidly he had done no pro bono work and it did not make a great impression on me, I have to confess.

Is the Bar Association's suggestion a wise one, and if so, why?

Mr. HOLMES. Mr. Chairman, I think that pro bono work is very important, but I would look at the words of "pro bono work" very

broadly. I think that a lawyer has an obligation to a society to make a contribution but it does not necessarily mean that that contribution would be simply in the form of doing legal work for free. It could also mean being an active participant in the community in trying to share his or her skills in the schools, his or her skills in your own private practice, his or her skills in other institutions that you are involved with to try to accomplish goals which are of social benefit.

I think of that particularly in my case, when I have been fortunate enough in my associations with the Baltimore Orioles, fortunate with my associations with Williams & Connolly, that these are places where active diversity efforts are underway, outreach to the minority community, active efforts to participate in minority activities. These are not per se pro bono legal work but they are areas in which, as a lawyer, one can bring his or her skills to making a contribution to the community.

Senator SIMON. One of the aspects, and you touched on this, is the necessity really to understand how some of those less fortunate in our society live. Theodore Roosevelt, back when, and I don't remember the year, made a statement that judges are very fine people but they easily lose touch with those in our population who face problems.

As a Federal district judge, first of all, you are automatically somewhat limited in terms of what you can do, but generally speaking, at the dinners you are invited to, at the receptions you are going to be invited to, you are not going to run into many unemployed people. You are not going to run into those who really face tough problems in our society.

How are you going to keep touch with this other aspect of our society that is so important that Senators easily lose touch with, too, as well as judges?

Mr. HOLMES. I think that is a very important issue, Mr. Chairman. I think that I have been very fortunate in my experiences, both when I was growing up and I worked as a caseworker for the Department of Public Welfare. I was active in political campaigns. I have criss-crossed the State of Oklahoma. I was active on the Governor's staff in matters that dealt with the problems of the indigent.

So I have in place in Oklahoma a network of people who are involved in those kinds of issues that I am familiar with, that are friends of mine and I keep in communication with, and I think that it is very important to maintain that kind of communication and not lose sight of those kinds of problems once you become removed, as you say, by virtue of becoming a judge, and I will keep those up.

Senator SIMON. We wish you the best, Mr. Holmes.

I do notice that you have an unusual combination of names. Sven is a very Scandinavian name; Holmes is not a Scandinavian name. I assume maybe your mother was Scandinavian?

Mr. HOLMES. Actually, my father is Scandinavian. He is Swedish.

Senator SIMON. All right. Somehow that name got changed along the way.

Mr. HOLMES. My mother is Scottish. I was named after my great uncle Sven-Eric.

Senator SIMON. That does sound Scandinavian.

Mr. HOLMES. At the time, it was a hyphenated name.

Senator SIMON. Thank you very, very much.

Mr. HOLMES. Thank you very much.

# TESTIMONY OF VICKI MILES-LAGRANGE, OKLAHOMA CITY, OK, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF OKLAHOMA

## QUESTIONING BY SENATOR SIMON

Senator SIMON. Ms. LaGrange, we welcome you. I didn't welcome your family here but we are pleased that so many members of your family and your friends could be here.

You have an unusual background in that you have also served in the State senate. You heard me ask one of the nominees earlier about legislative intent. I think it was Judge Murphy. Should a judge keep in mind legislative intent as you rule on whatever may be before you?

Ms. MILES-LAGRANGE. Senator Simon, I, too, would acknowledge the position of Justice Scalia regarding legislative intent and its role in this regard.

I would say that first you would look, in an effort to engage in statutory construction, you would hope that you could get there by a plain meaning of the statute. However, I do think that there may be those instances in which the plain meaning of a statute that would need to be interpreted by the court, applied by the court, may not be able to be ascertained and there may be those instances where the legislative intent could be helpful to the court in the application of the law.

Senator SIMON. In introducing you, I believe Senator Boren mentioned you were going to be the first African-American woman serving in that circuit on the district bench. Why is it important that we have diversity on the bench, African-American, Hispanic-American, women, others? Why is that important to our system of justice, or is it important?

Ms. MILES-LAGRANGE. Senator, I think that it is important that our government be representative of the people that it serves. However, I would note that I certainly won't be a black judge—well, I guess I will be a black judge—

Senator SIMON. You have had to correct yourself already here now. [Laughter.]

Ms. MILES-LAGRANGE [continuing]. If this committee sees fit to confirm me. But my race will not determine my decisions. I certainly don't want, if I do have the privilege to become a member of this court, I don't want to be known as a good black judge but I want to be respected and known as a good, fair judge.

Senator SIMON. That is an excellent answer, and I appreciate it. It is very interesting that Thurgood Marshall, who, of course, was the first African-American to serve on the U.S. Supreme Court, who tried 32 cases in the U.S. Supreme Court before he ever served on the Court and won 29 of the 32 cases, which is a very remarkable record, when he was asked about a successor, he said it is more important that you get quality here. He said that diversity is important for the very reasons that you outlined.



You intend to be a good judge and a fair judge, but in the process with your nomination we also get diversity, and I think that is a healthy thing for our country.

I notice when it says sole proprietor in your background here, that means you have some business background and some practical experience also, is that correct?

Ms. MILES-LAGRANGE. That is correct, Senator.

Senator SIMON. That will help give you some insights into problems that some of those who come before your court will have, I assume.

Ms. MILES-LAGRANGE. I think that it certainly will. My experience in the private practice of law during the 7½ years that I served in the Oklahoma Senate, during that period of time I represented people from my community from all walks of life, from every station in life. I do think that that uniquely broadens my own preparation, if you will, to administer justice fairly and impartially to those I would expect would come before me in the court.

Senator SIMON. I noticed also that you served as a legislative intern with Carl Albert from 1974 to 1976. That was under the period in which I first was elected to the U.S. House of Representatives and I remember Carl Albert being very good to me. I have always had a very soft spot in my heart for Speaker Carl Albert.

I wish you the best on the bench.

Ms. MILES-LAGRANGE. Thank you, Senator.

## **TESTIMONY OF WILLIAM H. WALLS, NEWARK, NJ, TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF NEW JERSEY**

### **QUESTIONING BY SENATOR SIMON**

Senator SIMON. Judge Walls, we welcome you. Have you had a problem, judge, at all, in facing a decision made by a higher court when your philosophy and that higher court's decision differed?

Judge WALLS. Senator, in over 16 years, I have faithfully followed stare decisis, the value of precedent, because early on I realized that my feelings are immaterial and irrelevant. I am duty bound to follow the law.

Senator SIMON. What if you felt really strongly about something, that you felt there was a real mistake in the law?

Judge WALLS. I would hope that eventually the legislature and/or the appellate courts in their wisdom would correct that imagined wrong, but until then, I would feel and would execute the law as I understood it to be.

Senator SIMON. We get into this gray area of separation of powers where I find some judges are reluctant to write to me. Others get on the phone and talk to me, write to me saying we ought to change this, change that. What is your feeling in this area?

Judge WALLS. Again, that is not my prerogative as a trial judge. I believe the prerogative of a trial judge is to administer the law as promulgated by the legislature and as, when necessary, interpreted by appellate courts.

Senator SIMON. But if you felt there was a real, maybe a drafting error in the law, on the decision you make, you have to follow the law, but would you feel free to contact Senator Lautenberg, Senator

Bradley, and say, I think there is a mistake here, that we ought to change the law?

Judge WALLS. No. I don't think that is my prerogative nor my privilege. I think under those circumstances, if I felt it was that type of error, I might make known my concern to the appropriate judicial appellate authority for their review, but I do not believe that I have the authority nor the discretion nor the permissive right to directly communicate with the legislature.

Senator SIMON. I think we have to be sensitive in this area, but I have to say just as one legislator that I have appreciated occasionally having judges contact me on such things as, for example, case load.

Judge WALLS. I am sorry, sir?

Senator SIMON. The case load that you have, an inadequacy of judges in a circuit or something like that. There are some times that you will have insights. Again, this is a delicate area where we do want to maintain the separation of powers but you get insights that frankly, as legislators, sometimes we cannot have.

Judge WALLS. Senator, I come from a State which prides itself on adherence to separation of powers. Our judiciary is a very independent part of government and it recognizes the independence of the other two parts, the executive and the legislature. In New Jersey, no judge, particularly no trial judge, should step over that line.

Senator SIMON. And that is the tradition in New Jersey?

Judge WALLS. That is the tradition, sir.

Senator SIMON. I respect you for your following that tradition, though again I would add, and sometimes it is maybe an informal thing, you are meeting with a Senator or a House Member and you can say something needs to be done.

The alternative dispute resolution has come up. In New Jersey, you mentioned your traditions. I can remember, I don't know who wrote it, but when I was a young, green State legislator reading a book by a New Jersey justice about the New Jersey system of selecting judges. Of course, Justice Brennan was a great Supreme Court Justice, in my opinion, with New Jersey roots.

Are there ways we can encourage less litigation without depriving people of their rights?

Judge WALLS. I think all of us, whether we are lawyers or legislators or judges, should view the resolution of disputes short of actual trial as a desirable goal. In New Jersey, we have long recognized, and I say it all the time when I am involved in negotiations, that a settled case is a won case. Consequently, our judges, including myself, we actively seek settlement by way of direct intervention with the parties or by referring them to mediators or to arbitrators. We realize that under those circumstances that that is the best route to go.

Hopefully, by also maintaining realistic, firm trial dates, we will minimize, but will not alleviate completely, the rise in litigation.

Senator SIMON. Judge, we thank you very much and wish you the best.

Judge WALLS. Thank you. Thank you, Senator.

Might I refer to some of my friends who did come here?

Senator SIMON. Yes, yes, please.



Judge WALLS. Unfortunately, my children, Peter and Claire, are on the west coast and they could not get here. My daughter is in San Francisco and my son is in Seattle. But I have with me one of my best judicial friends, Judge Herbert S. Glickman, who sits with me on superior court. I have a former law clerk, Mary Morley, who is an assistant prosecutor of the County of Essex, together with a very fine lawyer, Raymond Brown, who together with his father forms a very fine law firm known throughout the State as Brown & Brown.

Senator SIMON. You are getting in some pretty good plugs for these law firms here now, Judge. [Laughter.]

Thank you very much, and we welcome all of you.

**TESTIMONY OF ELAINE E. BUCKLO, CHICAGO, IL, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF ILLINOIS**

**QUESTIONING BY SENATOR SIMON**

Senator SIMON. Judge Bucklo.

Judge BUCKLO. Good afternoon, Senator.

Senator SIMON. We welcome you here, Judge Bucklo.

You may have heard one of the earlier witnesses say we ought to make better use of magistrates. You serve as a magistrate. How do we make better use of magistrates?

Judge BUCKLO. I think that varies from district to district. I think in the Northern District of Illinois, we make very good use of magistrate judges and I think that is true in many districts. I think there are some districts where better use can be made. It is one of those things that we have been discussing in this advisory committee to the magistrate judges division that I am a member of.

I think the best use of magistrate judges is the kind of use in which they function as the judges that they are and in which they are able to help relieve some of the congestion and some of the backlog on district courts around the country.

The Northern District of Illinois, where magistrate judges are utilized to the extent permitted by the Constitution, also has the shortest backlog of any major district in the country, I am told, and so I think that hopefully we make a difference in that and that that is part of the reason for the small backlog in our district.

Senator SIMON. To encourage better use of magistrates in the other circuits, some of whom are not utilizing them adequately, is this just a matter of judicial administration? Do we need any statutory changes? How do we achieve that?

Judge BUCKLO. I think Congress has passed legislation that allows district courts to utilize magistrate judges to the extent permitted by the Constitution, so I don't know that—there are probably kinds of changes that the magistrate judges division and the Judicial Conference have proposed from time to time that may seem to be worthwhile in the long run.

I think a lot of it is judicial administration. The ways in which magistrate judges are utilized do vary a lot. For instance, in St. Louis, they have gone to a direct assignment system in which magistrate judges and district judges are randomly assigned cases as

they come in. Only if parties decide not to consent to a magistrate judge exercising jurisdiction does it go back to the district judge.

The result is that they are finding that their magistrate judges are utilized completely to the extent that they can possibly be used. District judges are freed from some of that work and are able to maintain their own case loads in a better fashion and to dispose of cases more expeditiously. At the same time, there is no overlap in work and there is no repetition in work, which there can be in other districts.

In our own district, I have been privileged to try many cases and to take over management of many cases in terms of discovery. I hope and believe that, in that sense, I have been able to and that my colleagues there have been able to help significantly with the congestion that all district courts face.

Senator SIMON. When I called around to ask people about your service as magistrate, I received really an unusual number of laudatory comments about your work as magistrate. What makes Elaine Bucklo a good magistrate? That is a tough question, I know.

Judge BUCKLO. I hope that I am fair and patient, and I know I work hard. I try to bring all of my experience and all that I believe in into doing that job.

I know that when I became a magistrate judge, I remember keenly the frustration that I used to feel as a practicing attorney in terms of just waiting for cases to be decided. I always felt that, particularly at the lowest level, that it was most important to decide cases as expeditiously as possible, consistent with giving the parties and the lawyers complete justice.

As a result, I worked very, very hard my first year to dispose of the backlog that I suppose all new judges inherit. At the end of that year, I had done that. In fact, I was able then to go around looking for cases for trials and for motions. I think that maybe it has been as a result of that that lawyers and judges started referring more motions and more cases to me, and hopefully that has led to whatever comments you heard, but thank you.

Senator SIMON. Something led to them, I can assure you of that.

You heard me ask Judge Murphy about frivolous suits. We get discussions about that periodically here in the Judiciary Committee. Are there ways that we can discourage frivolous suits without in any way depriving people of their rights to the court?

Judge BUCKLO. I think under any law, there are going to be suits that are frivolous. Rule 11 obviously is one avenue for discouraging them.

I think sometimes early attempts at settlement, they don't discourage the filing of the suit but they at least encourage a quick disposal of the suit.

Senator SIMON. Have you ever used rule 11?

Judge BUCKLO. I have used rule 11. I think it is impossible to be a judge and not use it on occasion. Of course, as you know, it has been revised in the last year. A lot of lawyers thought that it should be revised. They thought that it had really become too tough. It will be interesting to see if it is as effective as it used to be.

At the same time, it perhaps will more directly affect motions in the way it has been passed in that it requires or encourages law-

yers to immediately notify the other side when they believe something is frivolous. Perhaps that will encourage people to withdraw motions.

Senator SIMON. Judge Bucklo, we thank you very much and wish you the best.

Judge BUCKLO. Thank you very much, sir.

**TESTIMONY OF ROBERT W. GETTLEMAN, EVANSTON, IL, TO BE  
U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF  
ILLINOIS**

**QUESTIONING BY SENATOR SIMON**

Senator SIMON. Robert Gettleman.

Mr. GETTLEMAN. Good afternoon, Senator.

Senator SIMON. We welcome you. Going on the bench will be a new experience for you. You heard me ask nominees who have served on the bench, is this a problem when your philosophy and the law differ. Do you think that is going to be a problem for you at all?

Mr. GETTLEMAN. I don't think it will be a problem because I think anyone who takes this entire process seriously and takes the oath of office to follow the law, to respect the notion of precedent and stare decisis, to respect the separation of powers, has to be prepared to do that. I believe I am prepared to do that.

If there was a precedent that I disagreed with as a district judge, there is not a lot I can do about that. I suppose everybody hopes from time to time that things they disagree with will change over time, but it is not the role of the district courts to make precedent. It is the role to follow precedent and I think we would all understand that when we take the oath of office.

Senator SIMON. I note that you have chaired the Illinois Guardianship and Advocacy Commission. I am a great believer you don't contribute anything in these areas without learning. A member of my staff has been a volunteer tutor. I commended her for being a volunteer tutor and she said, I have learned much more than I taught.

What have you learned as the chair of the Illinois Guardianship and Advocacy Commission, and is that going to in any way enrich you as a Federal judge?

Mr. GETTLEMAN. I think the answer to the second question is yes. I learned a lot in that capacity because I saw the statute that I had worked very hard on back in the early- and mid-1970's, the revisions to the Mental Health Code and particularly the revisions to the guardianship provisions of the Probate Act that I was most involved with on that earlier commission, I saw that legislation, which was passed almost untouched, put into practice.

The Guardianship and Advocacy Commission is the guardian of last resort in the State of Illinois. When we drafted that legislation and when it was being debated in Springfield and ultimately passed, I don't think anybody would have dreamed that this guardian of last resort would have had 7,000 wards under its wing, and yet that is the number of wards that we had in the commission when I left that commission last year, 7,000 wards. These were either mentally ill, mentally retarded, or elderly infirm who had no



other people available to act as guardian for them and the staff of this commission had to act as guardian.

It demonstrated to me that, first, our statute worked well. There was a method in place to appoint guardians, make sure people didn't slip through the cracks as much as possible.

Second, it also demonstrated that without this agency, a lot of those people wouldn't have had any guardianship or any advocacy or protection.

So it was rewarding to see the legislation work. It was also discouraging to see the need was so much greater than we thought it was. As a judge or as a human being, as a person, and I know you asked one of the other nominees the question, how are you going to keep in touch with reality——

Senator SIMON. I was just going to ask you that.

Mr. GETTLEMAN. You do it through work with agencies such as this. Obviously, as a Federal judge you can't be a State officer, but there are other agencies and organizations that you can still maintain contact with, like Access Living, for instance, where you can continue to at least maintain knowledge and contact with the issues that affect people that, as you say, Federal judges don't often associate with in their professional judicial capacity.

Senator SIMON. Here, I would just add, not only to you but to the others, who all have to listen to me and nod and agree for at least another 24 hours, that obviously there are things that you cannot do once you become a Federal judge, but there are also things that you can do. I think it is important to explore what you can do.

Federal judges should not live in splendid isolation from the realities of our society. I think that is important to them and I think it is important also, because you are talking about the six nominees today, here are all extremely able people who can contribute in special ways. That contribution should not be diminished because you are on the Federal bench.

Mr. GETTLEMAN. I absolutely agree with that.

Senator SIMON. Mr. Gettleman, we wish you the best, as well as all the other nominees that are here.

Mr. GETTLEMAN. Thank you, Senator.

Senator SIMON. The hearing stands adjourned.

[Whereupon, at 5:55 p.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

UNITED STATES SENATE  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Diana E. Murphy  
(maiden name Diana E. Kuske)

2. Address: List current place of residence and office address(es).

Home: 2116 West Lake of Isles  
Minneapolis, MN 55405

Office: 684 U.S. Courthouse  
110 South 4th Street  
Minneapolis, MN 55401

3. Date and place of birth.

January 4, 1934. Faribault, Minnesota.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Joseph E. Murphy, Jr.; retired; formerly chairman, Midwest Communications, Inc. (WCCO radio and television).

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Minnesota, Minneapolis, Minnesota, 1950-1954 - B.A. 1954.

Johannes Gutenberg University, Mainz, Germany, 1954-1955 (Fulbright Scholarship).

University of Minnesota Graduate School (history), 1955-1958 (completed course work for Ph.D. but realized in the process that I did not want to be a professional historian).

University of Minnesota Law School, 1971-1974 - J.D. 1974.



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 2

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

University of Minnesota  
 Resident dormitory counselor, 1955-1956  
 Teaching assistant, Department of History, 1955-1958.

Minneapolis Commission on Human Relations  
 Temporary substitute for Executive Director, 1965.

Lindquist & Vennum Law Firm, Minneapolis, Minnesota  
 Law clerk, 1973  
 Associate, 1974-1976

Hennepin County Municipal Judge, 1976-1978

Minnesota District Court Judge, 1978-1980

U.S. District Court Judge for the District of Minnesota, 1980-present  
 Chief Judge since 1992.

7. Military Service: Have you had any military service. If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No military service.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Phi Beta Kappa.

B.A. magna cum laude.

J.D. magna cum laude.

Editor, Minnesota Law Review.

Order of the Coif.

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 3

Fulbright scholarship for study in Germany.

Distinguished Citizen Award, Alpha Gamma Delta, 1985.

University of Minnesota Outstanding Achievement Award, 1983.

YWCA Outstanding Achievement Award, 1981.

Fellow, American Bar Foundation.

Amicus Founders Award, 1980.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any office which you have held in such groups.

American Bar Association since 1974.

Standing Committee on Judicial Selection, Tenure and Compensation, 1991-present

Judges Advisory Committee on Ethics and Professional Responsibility, 1981-1988

Federal Bar Association since 1980.

Minnesota State Bar Association

Board of Governors, 1977-1981.

Hennepin County Bar Association

Governing Council, 1976-1981.

Co-chair, Program Committee 1978-1979

Chair, Election Committee 1978

Hennepin County Bar Foundation, Chair

Federal Judges Association

Board of Directors since 1982

President, 1989-1991

Vice President, 1984-1989

Membership chair, 1983-1987

Chair, National Network, 1987-1989

Chair, Goals and Priorities Committee, 1993-1994

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 4

Federal Judicial Center  
 Board of Directors 1990-1994  
 Chair of Education Committee, 1992-1994  
 Director Search Committee, 1994

Eighth Circuit Judicial Council since 1992  
 Chair, Personnel Committee  
 District Court Committee  
 Senior Judge Committee

Eighth Circuit Judicial Conference  
 Program and Arrangements Committees

Eighth Circuit Historical Society  
 Board of Directors, 1988-1991

Constituted and appointed Eighth Circuit Gender Bias Task Force, 1993.

American Judicature Society since 1970  
 Board of Directors, 1982-1993  
 Chair of Board, 1989-1991  
 Vice President, 1985-1988  
 Treasurer, 1988-1989  
 Chair, Nominating Committee  
 Chair, Awards Committee

American Law Institute, elected member.

National Association of Women Judges

Minnesota District Judges Association, 1978-1980.

Hennepin County Municipal Judges Association, 1976-1978,  
 Treasurer.

Minnesota Women Lawyers.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

In today's world almost any organization may occasionally be involved in lobbying public bodies on some issue. The only organization for which I have participated in communications with public bodies is the Federal Judges Association. One of

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 5

the purposes of that Association is to engage in dialogue with the other branches of government about issues affecting the federal judiciary.

The following are other organizations to which I belong in addition to those listed in answer to question 9:

Twin Cities Public Television  
 Trustee, 1985-present  
 Chair of board - 1990-1992

United Way of Minneapolis Area  
 Board of Directors, 1985-present  
 Treasurer, 1990-1994

Bush Foundation  
 Board of Directors, 1982-present  
 Chairman of Board, 1986-91

St. John's University  
 Board of Regents, 1978-1987, 1988-present  
 Vice Chair of Board, 1985-1987.

University of Minnesota Foundation  
 Board of Trustees, 1990-present  
 Treasurer, 1992-present.

Science Museum of Minnesota,  
 Board of Trustees, 1988-present  
 Vice Chair of Board, 1991-present.

University of St. Thomas  
 Board of Trustees, 1991-present  
 Executive Committee, 1994-present.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Minnesota and United States District Court, District of Minnesota - 1974.

U.S. Supreme Court - 1980.

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 6

12. Published Writings: List the titles, publishers, and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Copies are attached for those items marked with an asterisk. See Appendix I.

"Bringing Scientific and Technical Expertise into the Courtroom: A Judicial Challenge", paper presented at Conference on Science, Technology and the Courts: The Use of Court-Appointed Experts, Washington, D.C., November 5, 1993.\*

"A Tribute to U.S. Magistrate Bernard P. Becker", 17 Wm. Mitchell L. Rev. 395 (1991).\*

"Unified and Consolidated Complaints in Multidistrict Litigation", 132 F.R.D. 597 (1990).

"Leading the Federal Judges Association into the 1990s", 22 Third Branch (Oct. 1990).\*

"The Judicial Improvements Act of 1990: The Concerns of Federal Judges", 74 Judicature 112 (Aug.-Sep. 1990).\*

"Impeaching Federal Judges: Where Are We and Where Are We Going?", 72 Judicature 359 (Apr.- May 1989) (with Professor Victor Rosenblum, Senate Counsel Michael Davidson, Honorable Sherman Finesilver, and Professor Ronald Rotunda).\*

"Women and the Constitution: Introductory Remarks", 6 Law & Ineq. J. 1 (May 1988).\*

"An Effort to Revise the Minnesota Bill of Rights", 58 Minn. L. Rev. 157 (1973).

"Report of Bill of Rights Committee", Minnesota Constitutional Study Commission (1973).\*

Case Comment, 57 Minn. L. Rev. 603 (1973).



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 7

"Minneapolis Works for Equal Opportunity", Report of  
 Minneapolis League of Women Voters (1965).\*

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. June 7, 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

Hennepin County Municipal Judge, 5/76-5/78 (appointed by Governor Wendell Anderson, county court of limited jurisdiction -- criminal misdemeanors and civil cases under \$6,000).

Minnesota District Court Judge, 5/78-2/80 (appointed by Governor Rudy Perpich, state court of general jurisdiction).

U.S. District Court Judge for the District of Minnesota since 2/20/80 (appointed by President Jimmy Carter); Chief Judge since 10/1/92.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgement was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Response to 15(1):

Copy of unpublished opinion marked with an asterisk is attached. See Appendix II.

Pioneer Military Lending, Inc. v. Manning, 2 F.3d 280 (8th Cir. 1993).

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 8

Vitale v. Aetna Casualty & Surety Company, 814 F.2d 1242 (8th Cir. 1987).

Bituminous Cas. Corp. v. Tonka Corp., 1992 WL 605421 (D. Minn. 1992),\* aff'd, 9 F.3d 51 (8th Cir. 1993), reh'g denied, (Dec. 21, 1993), cert. denied, 62 USLW 3754 (1994).

DeGidio v. Pung, 704 F. Supp. 922 and 723 F. Supp. 135 (D. Minn. 1989), aff'd, 920 F.2d 525 (8th Cir. 1990).

Price v. Viking Penguin, Inc., 676 F. Supp. 1501 (D. Minn. 1988), aff'd, 881 F.2d 1426 (8th Cir. 1989), cert. den., 493 U.S. 1036 (1990).

Auto. Importers of Am., Inc. v. State of Minnesota, 681 F. Supp. 1374 (D. Minn. 1988), aff'd, 871 F.2d 717 (8th Cir. 1989), cert. denied, 493 U.S. 872 (1989).

Williams Pipe Line Co. v. City of Mounds View, 651 F. Supp. 551 (D. Minn. 1987) and 704 F. Supp. 914 (D. Minn. 1989).

Olmsted Citizens for a Better Community v. United States, 606 F. Supp. 964 (D. Minn. 1985), aff'd, 793 F.2d 201 (8th Cir. 1986).

Scientific Computers, Inc. v. Edudata Corp., 599 F. Supp. 1084 and 599 F. Supp. 1092 (D. Minn. 1984), aff'd, 746 F.2d 429 (8th Cir. 1984).

United States Jaycees v. McClure, 534 F. Supp. 766 (D. Minn. 1982), rev'd, 709 F.2d 1560 (8th Cir. 1983), rev'd sub nom. Roberts v. U.S. Jaycees, 468 U.S. 609 (1984).

#### Response to 15(2):

Copies of unpublished opinions marked with an asterisk are attached. See Appendix III.

Creighton v. City of Saint Paul, Memorandum Opinion and Order, Civ. 4-84-162 (D. Minn., July 17, 1984),\* rev'd, 766 F.2d 1269 (8th Cir. 1985) (agent not entitled to qualified immunity in a § 1983 action), rev'd sub nom. Anderson v. Creighton, 483 U.S. 635 (1987).

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 9

United States Jaycees v. McClure, 534 F. Supp. 766 (D. Minn. 1982), rev'd, 709 F.2d 1560 (8th Cir. 1983) (Jaycees had First Amendment right to exclude women members), rev'd sub nom. Roberts v. U.S. Jaycees, 468 U.S. 609 (1984)

Printed Media v. Solna Web, Inc., Order, Civ. 4-90-360 (D. Minn., Dec. 10, 1992), \* rev'd, 11 F.3d 838 (8th Cir. 1993) (order denying motion of Solna Web, Inc. of Delaware to vacate default judgment was reversed because service on Solna Web, Inc. of Missouri was insufficient service)

United States v. Selwyn, Memorandum Opinion and Order, Crim. 4-92-41 (D. Minn., May 11, 1992), \* rev'd, 998 F.2d 556 (8th Cir. 1993) (embezzlement conviction overturned because element of lawful possession was not established)

Carter v. United Food & Comm'l Workers, Local No. 789, Memorandum Opinion and Order, Civ. 4-87-806 (D. Minn. May 10, 1991), \* rev'd, 963 F.2d 1078 (8th Cir. 1992) (union's motion for summary judgment should not have been granted because issues of fact existed over whether it had discriminated against women members during labor negotiations)

Minnesota Milk Producers v. Madigan, Memorandum Opinion and Order, Civ. 4-90-31 (D. Minn. Dec. 20, 1990), \* rev'd, 956 F.2d 816 (8th Cir. 1992) (Agricultural Marketing Agreement Act does not preclude judicial review; producers have standing to challenge milk marketing orders)

Mille Lacs Band of Chippewa Indians v. Minnesota, Memorandum Opinion and Order, Civ. 4-90-605 (D. Minn., Jan. 28, 1992) and Order, Civ. 4-90-605 (D. Minn., July 20, 1992), \* rev'd, 989 F.2d 994 (8th Cir. 1992) (landowners and counties allowed to intervene because the state did not necessarily have all of the same interests)

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 10

Johnson v. Minnesota Historical Soc., Memorandum Opinion and Order, Civ. 4-88-727 (D. Minn. March 29, 1990),\* rev'd, 931 F.2d 1239 (8th Cir. 1991); Haglof v. Northwest Rehabilitation, Inc., Memorandum Opinion and Order, Civ. 4-88-517 (D. Minn. April 5, 1989),\* rev'd, 910 F.2d 492, 495 (8th Cir. 1990); (summary judgment reversed in these age discrimination cases; "[s]ummary judgment should seldom be used in cases alleging employment discrimination." Haglof, 910 F.2d at 495)

Lovett v. St. Johnsbury Trucking, Memorandum Opinion and Order, Civ. 4-89-834 (D. Minn. Jan. 26, 1990),\* rev'd, 931 F.2d 494 (8th Cir. 1991) (payments made by bankrupt company within 90 days of the filing of the bankruptcy petition were made in the ordinary course of business and therefore were not a preference recoverable by the bankruptcy trustee)

Jader v. Principal Mutual Life Insurance Co., 702 F. Supp. 224 (D. Minn. 1989), rev'd, 925 F.2d 1075 (8th Cir. 1991) (remanded for consideration of subject matter jurisdiction under ERISA)

U.S. v. Griffin, Order, Crim. 4-90-10 (D. Minn. May 12, 1989),\* rev'd, 922 F.2d 1343 (8th Cir. 1990) (armed bank robbery conviction overturned because of admission of statements defendant made during home interview; appeals court found interview custodial and statements involuntary)

Knowlton v. Allied Van Lines, Memorandum Opinion and Order, Civ. 4-88-397 (D. Minn. Sept. 6, 1988),\* rev'd, 900 F.2d 1196 (8th Cir. 1990) (although motor vehicle accident occurred outside of Minnesota and was unrelated to defendant's business there, state long-arm statute conferred personal jurisdiction over defendant who designated agent to receive process in state)

In re LeMaire, Memorandum Opinion and Order, Civ. 4-92-1005 (D. Minn. June 6, 1988),\* rev'd, 898 F.2d 1346 (8th Cir. 1990) (public policy prevents bankruptcy discharge of judgment debt arising from assault)

INF, Ltd. v. Spectro Alloys Corp., Memorandum Opinion and Order, Civ. 4-86-705 (D. Minn. July 8, 1988),\* rev'd, 881 F.2d 546 (8th Cir. 1989), cert. granted and judgment

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 11

vacated, 497 U.S. 1001 (1990) (court could adopt Interstate Commerce Commission decision)

Defenders of Wildlife v. Envtl. Protection Agency, 688 F. Supp. 1334 (D. Minn. 1988), rev'd, 882 F.2d 1294 (8th Cir. 1989), aff'd in part & rev'd in part, (the Environmental Protection Agency properly enjoined from allowing the use of pesticide ingredient unless specific criteria satisfied; no private right of action under either the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act; no jurisdiction for claim under Administrative Procedure Act)

H.J., Inc. v. Int'l Tel. & Tel., Memorandum Opinion and Order, Civ. 4-82-1277 (D. Minn. July 18, 1986), \* aff'd in part & rev'd in part, 867 F.2d 1531 (8th Cir. 1989), reh'g denied, 876 F.2d 59 (1989) (jury verdict in favor of plaintiff on attempted monopolization and tortious interference claims affirmed, but verdict in favor of plaintiff on monopolization, conspiracy in restraint of trade, contract, fraud, and conversion claims reversed.)

Chizmadia v. Smiley's Point Clinic, Memorandum Opinion and Order, Civ. 4-86-942 (D. Minn. Nov. 13, 1987), \* rev'd, 863 F.2d 1163 (8th Cir. 1989) (remanded to consider possible way of avoiding filing requirements of new state malpractice statute)

In re Belfry, Memorandum Opinion and Order, Civ. 4-87-558 (D. Minn. Sept. 17, 1987), \* rev'd, 862 F.2d 661 (8th Cir. 1988), reh'g denied, Jan 4, 1989 (debtor's misuse of funds intended for automobile restoration did not constitute non-dischargeable embezzlement under bankruptcy code)

Int'l Assoc. of Machinists v. Republic Airlines, Inc., Order, Civ. 4-86-272 (D. Minn. Oct. 28, 1986), \* rev'd, 829 F.2d 658 (8th Cir. 1987) (collective bargaining agreement required court to determine whether grieved issue was arbitrable)



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 12

U.S. v. Olson, Verdict, Crim. 4-82-19 (D. Minn. April 29, 1983), rev'd, 697 F.2d 273 (8th Cir. 1983) (counterfeiting conviction reversed because mid-trial motion for continuance was denied)

U.S. v. Cowden, Verdict, Crim. 4-81-6 (D. Minn. May 14, 1981), rev'd, 677 F.2d 417 (8th Cir. 1982) (conviction for making a false customs declaration reversed on ground that the statement was not material)

Response to 15(3):

Copies of unpublished opinions marked with an asterisk are attached. See Appendix IV.

Creighton v. City of Saint Paul, Memorandum Opinion and Order, Civ. 4-84-162 (D. Minn., July 17, 1984), \* rev'd, 766 F.2d 1269 (8th Cir. 1985), rev'd sub nom. Anderson v. Creighton, 483 U.S. 635 (1987). On remand, Creighton v. Anderson, 724 F. Supp. 654 (D. Minn. 1989), aff'd, 922 F.2d 443 (8th Cir. 1990).

United States Jaycees v. McClure, 534 F. Supp. 766 (D. Minn. 1982), rev'd, 709 F.2d 1560 (8th Cir. 1983), rev'd sub nom. Roberts v. U.S. Jaycees, 468 U.S. 609 (1984).

United States v. Collins, 966 F.2d 950 (8th Cir. 1993), cert. denied, \_\_\_ U.S. \_\_\_, 114 S. Ct. 412 (1993).

Vieira v. Presley, 988 F.2d 850 (8th Cir. 1993).

Pioneer Military Lending, Inc. v. Manning, 2 F.3d 280 (8th Cir. 1993).

Mga Susu, Inc. v. County of Benton, Memorandum Opinion and Order, Civ. 5-93-142 (D. Minn. 1994).\*

United States v. Lloyd, Memorandum Opinion and Order, Crim. 4-93-3 (D. Minn. 1993) appeal filed, (Dec. 16, 1993).\*

Bukaka, Inc. v. County of Benton, Memorandum Opinion and Order, Civ. 5-93-142 (D. Minn. 1993).\*

United States v. Clapp, Memorandum Opinion and Order, Crim. 4-93-44 (D. Minn. 1993).\*

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 13

Minnesotans for Term Limits v. Hayes, Civ. 4-93-766 and Longley v. Hayes, Civ. 4-93-805, Memorandum Opinion and Order (D. Minn. 1993).\*

Farmers Union Agency v. Butenhoff, 808 F.Supp. 677 (D. Minn. 1992).

Schneider v. City of Ramsey, 800 F. Supp. 815 (D. Minn. 1992), aff'd, 12 F.3d 140 (8th Cir. 1993), reh'g denied, (February 10, 1994), petition for cert. filed, (May 11, 1994) (No. 93-1796).

United States v. Loren Francis Bellrichard, 779 F. Supp. 454 (D. Minn. 1991), aff'd, 994 F.2d 1318 (8th Cir. 1993), cert. denied, - U.S. \_\_\_, 114 S.Ct. 337 (1993).

Waybenais v. United States, 769 F. Supp. 306 (D. Minn. 1991).

United States v. McDonough, 706 F. Supp. 692 (D. Minn. 1989).

In re Search Warrants Issued on June 11, 1988, for the Premises of Three Buildings at Unisys, Inc., 710 F. Supp. 701 (D. Minn. 1989).

United States v. Johnson, 711 F. Supp. 506 (D. Minn. 1989).

DeGidio v. Pung, 704 F. Supp. 922 and 723 F. Supp. 135 (D. Minn. 1989), aff'd, 920 F.2d 525 (8th Cir. 1990).

Defenders of Wildlife v. the Environmental Protection Agency, 688 F. Supp. 1334 (D. Minn. 1988), aff'd in part & rev'd in part, 882 F.2d 1294 (8th Cir. 1989).

Hedge v. Lyng, 689 F. Supp. 898 (D. Minn. 1988).

United States v. Horton, 685 F. Supp. 1479 (D. Minn. 1988), aff'd, 902 F.2d 1575 (8th Cir. 1990) remanded for resentencing in light of, Mistretta v. United States, 488 U.S. 361 (1989).

Perez-Lacey v. University of Minnesota, 655 F. Supp. 1066 (D. Minn. 1987).

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 14

Rhodes v. Northwestern Bell Tel. Co., 656 F. Supp. 946 (D. Minn. 1987), rev'd, 709 F. Supp. 162 (D. Minn. 1987).

Edmonton World Hockey Enters., Ltd. v. Abrahams and National Hockey League v. Abrahams, 658 F. Supp. 604 (D. Minn. 1987).

IFG Leasing Co. v. Tibbetts, 675 F. Supp. 547 (D. Minn. 1987).

Williams v. Omodt, 640 F. Supp. 120 (D. Minn. 1986).

Minneapolis Urban League, Inc. v. City of Minneapolis, 650 F. Supp. 303 (D. Minn. 1986).

Freeman v. Hayek, 635 F. Supp. 178 (D. Minn. 1986).

Pinkney v. Clay County, 635 F. Supp. 1079 (D. Minn. 1986).

Quaschnick v. Minnesota, 106 F.R.D. 587 (D. Minn. 1985) and 650 F. Supp. 290 (D. Minn. 1986).

Stark v. St. Cloud State Univ., 604 F. Supp. 1555 (D. Minn. 1985), aff'd, 802 F.2d 1046 (8th Cir. 1986).

United States Ex Rel. Shakopee v. Pan American, 616 F. Supp. 1200 (D. Minn. 1985), dismissing appeal, 789 F.2d 632 (8th Cir. 1986).

Olmsted Citizens for a Better Community v. United States, 605 F. Supp. 964 (D. Minn. 1985), aff'd, 793 F.2d 201 (8th Cir. 1986).

Carman v. City of Eden Prairie, 622 F. Supp. 963 (D. Minn. 1985).

Doe v. Hennepin County, 623 F. Supp. 982 (D. Minn. 1985) aff'd, 858 F.2d 1325 (8th Cir. 1988), cert. denied, 490 U.S. 1108 (1989).

F.T.C. v. Kitco of Nevada, Inc., 612 F. Supp. 1280 (D. Minn. 1985).

DeGidio v. Perpich, 612 F. Supp. 1383 (D. Minn. 1985).

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 15

Price v. Viking Press, Inc., 625 F. Supp. 641 (D. Minn. 1985).

Black v. Cloose, 612 F. Supp. 470 (D. Minn. 1984), aff'd, 758 F.2d 317 (8th Cir. 1985).

In re Edward Pirsig Farms, Inc., 47 B.R. 376 (D. Minn. 1984).

Dennison v. Vietch, 560 F. Supp. 435 (D. Minn. 1983).

St. Paul Intertribal Housing Bd. v. Reynolds, 564 F. Supp. 1408 (D. Minn. 1983).

Scallen v. Minnesota Vikings Football Club, Inc., 574 F. Supp. 278 (D. Minn. 1983).

Alexander v. City of Minneapolis, 531 F. Supp. 1162 (D. Minn. 1982), aff'd 698 F.2d 936 (8th Cir. 1983).

Taylor v. West Publishing Co., 548 F. Supp. 61 (D. Minn. 1982), aff'd 693 F.2d 837 (8th Cir. 1982).

Jaeger v. City of Farmington, Minnesota, 528 F. Supp. 684 (D. Minn. 1981).

Stevens v. Braniff Airways, Inc., 490 F. Supp. 231 (D. Minn. 1980).

Jones v. District VIII Planning Council, 492 F. Supp. 143 (D. Minn. 1980).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Minority Group Housing Committee for the City of Minneapolis, 1965-1968 (appointed by Mayor).

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 16

Minnesota Constitutional Study Commission, 1971-1973  
(appointed by Governor)  
Secretary and member of Executive Committee  
Chairman, Bill of Rights Committee  
Member, Reapportionment Committee.

Human Resources Task Force of Capital Long Range Improvements  
Committee, 1971-1973 (appointed by Minneapolis City Council).

Minneapolis Charter Commission, 1973-1976 (appointed by Chief  
Judge of District Court); elected chairman, 1974-1976 (period  
of significant charter change; resigned when appointed to  
bench).

Minnesota Coordinating Committee for Minnesota Women's Meeting  
in 1977 (appointed by U.S. Department of State pursuant to  
Observance of International Women's Year).

Minnesota Bicentennial Commission, 1987-1988 (appointed by  
Chief Justice of the Minnesota Supreme Court).

17. Legal Career:

a. Describe chronologically your law practice and experience  
after graduation from law school including:

1. whether you served as clerk to a judge, and if so,  
the name of the judge, the court, and the dates of  
the period you were a clerk;

I did not serve as clerk to a judge.

2. whether you practiced alone, and if so, the add-  
resses and dates;

I did not practice alone.

3. the dates, names, and addresses of law firms or  
offices, companies or governmental agencies with  
which you have been connected, and the nature of  
your connection with each;



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 17

Lindquist & Vennum  
 4200 IDS Center  
 80 South 8th Street  
 Minneapolis, MN 55402  
 Law clerk, 1973  
 Associate, 1974-1976

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

Litigation.

2. Describe your typical former clients, and mention the areas, if any in which you have specialized.

Typical clients included individuals, corporate entities, and labor unions. I represented both plaintiffs and defendants. In addition to civil litigation, I was regularly involved in regulatory hearings related to transportation authority and rates.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:

(a) federal courts	25%
(b) state courts of record	25%
(c) other courts	50%

3. What percentage of these appearances was

(a) civil	95%
-----------	-----

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 18

(b) criminal 5%

4. State the number of cases in courts of record you tried to verdict or judgement (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

30 (20 as sole counsel; 10 as associate counsel).

5. What percentage of these trials was:

(a) jury 5%

(b) non-jury 95%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the final disposition of the case. Also state as to each case:

- (a) the date of the representation;
- (b) the name of the court and the name of the judge or judges; before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Since I have been a trial judge for more than 18 years, this question is difficult to answer with the detail required. Listed below is information supplied in 1979 when my work as a lawyer was more recent; I have attempted to update addresses and telephone numbers.

(1) John W. Anderson, et al. v. Werner Continental, Inc., et al., Civ. 4-74-343, United States District Court (D. Minn.). This action was brought under federal securities laws by 122 named plaintiffs asserting individual, class and derivative claims against multiple defendants. Plaintiffs were shareholders and former shareholders of Werner Continental, Inc. seeking to share in alleged premium which Harvey L. Werner

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 19

received for selling controlling interest in Werner Continental, Inc. to John N. Hall, officer and controlling shareholder in Hall's Motor Transit Company.

Robert V. Atmore, 4200 IDS Center, Minneapolis, Minnesota 55402 (612/371-3211) and I represented the defendants. Plaintiffs' counsel was James Malcolm Williams, 212 West Franklin Avenue, Minneapolis, Minnesota 55404 (612/871-8885). I worked on 1975 discovery motions (before Magistrate J. Earl Cudd) and 1976 motions to dismiss class action and derivative action claims, the request for punitive damages, and particular plaintiffs and defendants (before Judge Donald D. Alsop), as well as discovery and general trial preparation. Defendants prevailed on motions which significantly narrowed the scope of the litigation. There had been no final disposition at time I went on the bench.

Case represents an early and successful application of Blue Chip Stamps v. Manor Drug Stores, 421 U.S. 723 (1975), and other theories to defeat a proposed class action at a time when most of the federal cases favored certification of securities class actions brought by shareholders.

(2) Tampa Bay Area NFL Football, Inc., et al. v. National Football League Players Association, et al., 76-146 Civ-JE, United States District Court (S.D. Florida); January and February, 1976. Plaintiffs had been awarded NFL franchises in Tampa and Seattle. They filed a class action for declaratory and injunctive relief. They sought a declaration that assignment of veteran players' contracts to the new clubs through an expansion draft would not violate antitrust laws. They also sought to enjoin the defendants from interference. Judge Joe Eaton granted defendants' motion to dismiss the case.

Edward M. Glennon and Mark R. Johnson, 4200 IDS Center, Minneapolis, Minnesota 55402 (612/371-3211) and I were of counsel to Miami attorneys and represented the defendants. I did all of the research and briefing to assert lack of a justiciable controversy and failure to meet other jurisdictional requisites of federal courts (cause of action not arising under the laws of the United States; incomplete diversity).

Work on this case gave me an in-depth opportunity to apply some of the jurisdictional doctrines peculiar to the federal

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 20

courts and to appreciate the significance of Article III of the Constitution.

(3) Petition of Purolator Courier Corporation for Irregular Route Common Carrier Authority, Minnesota Public Service Commission; extensive hearings throughout 1975 before state hearing examiner Rich DeLong and the Commission; I represented petitioner; opposing counsel were Douglas Skor, Briggs & Morgan, W-2200 First National Bank Building, St. Paul, Minnesota, 55101 (612/291-1215) and Val Higgins, 1000 First National Bank Building, Minneapolis, Minnesota 55402 (612/333-1341).

Case represents attempt by carrier, offering an innovative and needed statewide courier service, to obtain economical and efficient operating authority to serve the public in a regulated industry characterized by statutory restrictions; involved technological considerations, rulemaking and legislative alternatives to litigation, as well as evidentiary hearings and review proceedings. Authority denied.

(4) Mark Mechtel, et al. v. Soo Line Railroad Co., Ramsey County District Court (1974); Garry Woodbridge v. Minnesota Dakota Western Railroad, District Court, Koochiching County (1975); Harold Fread v Soo Line Railroad Co., District Court, Douglas County (1975) - series of actions for damages arising out of railroad operations (freight car jumping and crossing accidents).

I worked with lead counsel Edward M. Glennon, 4200 IDS Center, Minneapolis, Minnesota 55402 (612/371-3211) on all cases, representing the plaintiff in the Woodbridge case and defendant Soo Line Railroad in the others. There was a final disposition favorable to our clients in each case (including a directed verdict in the Fread case). On each matter I prepared trial briefs, memoranda for favorable evidentiary rulings, jury instructions, etc.

In the Mechtels case I also handled discovery depositions, pretrial investigation and preparation of witnesses, and appeared at trial in November of 1974 before Judge Ronald E. Hachey; case settled; opposing counsel was Stewart E. Perry, 1625 Park Avenue, Minneapolis, Minnesota 55404 (612/336-8611).

Cases were significant to my development as an effective advocate in that they all dealt with the standards of liability for railroads, but required application of such

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 21

standards to the special facts of each case and to the benefit of both the person injured (Woodbridge case) and the operating railroad (Mechtel and Fread cases).

(5) Potlach Corporation, Northwest Paper Division v. Public Service Commission, et al., District Court, Carlton County, Judge Donald E. Anderson -- appeal of Order of Public Service Commission granting petition of Northern Lines Committee to establish maximum absorption of switching charges on pulpwood shipments.

We represented Potlach Corporation which protested the petition of the Northern Lines Committee. We had participated in the evidentiary hearing before the Minnesota Public Service Commission and then appealed the order of the Commission to the state district court. Hearings were held in the district court in May and December of 1975.

Co-counsel was William E. Fox, 4200 IDS Center, Minneapolis, Minnesota 55402 (612/371-3211). I assisted in preparing witness for direct examination and aided lead counsel in planning cross-examination. I wrote the hearing brief and the appellate memoranda.

Case involved complexities of railroad rate system, economics of transporting bulky unprocessed raw material, and the interplay between carrier and processor. It was significant in my development as an advocate in demonstrating how important it is to develop the evidence fully at the initial stage of litigation.

(6) In the Matter of Dr. Alan S. Briskin, January, 1975. Dr. Briskin filed a complaint before the University of Minnesota Senate Judicial Committee appealing his termination as assistant professor. The case was settled favorably to my client after discovery and preparation for litigation.

I represented the complainant, Dr. Briskin. The University of Minnesota was represented by Thomas W. Tinkham, Dorsey & Whitney, 220 South Sixth Street, Suite 2200, Minneapolis, Minnesota (612/340-2829). I developed facts, located witnesses and discovered documents which made a favorable settlement possible for my client who was offered another position in the University as a result.

I learned in this case how important it is to become thoroughly familiar with the client's environment, not only to



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 22

be able to present his case effectively, but also to be able to develop a settlement strategy.

(7) Petition of Harold Dickerson for operating rights for movement of trailers, Public Service Commission hearing in Hibbing, Minnesota, for two days in December of 1975, before state hearing examiner George Deretich.

I represented Morgan Drive Away, a carrier with authority to transport trailer homes, in opposition to the requested authority, and put on a case in chief and cross-examined witnesses. Issues involved public need and the extent to which it could be met by authorized carriers. Opposing counsel were Edward J. Matonich, P.O. Box 127, Hibbing, Minnesota 55746, (213/261-8881); James S. Holmes, 200 South Sixth Street, Suite 470, Minneapolis, Minnesota 55402 (612/371-3900); and J. P. Dosland, Box 100, Moorhead, Minnesota 56560 (218/233-2744).

Case heard in an outstate Minnesota community experiencing a construction boom related to taconite mining. While client would have liked to defeat the petition completely, it was pleased to have authority restricted to movement to and from the Hibbing area.

(8) Dorothy A. Park v. Willis B. Park, Hennepin County District Court, Judge Eugene Minenko, -- divorce action in late 1975 in which the significant legal issue was the validity and effect of an antenuptial agreement.

Co-counsel was William P. Mortenson, 8200 Normandale Boulevard, Suite 323, Minneapolis, Minnesota 55436 (612/831-1757); we represented the defendant, Willis Park; opposing counsel was Ronald Schumeister, 4921 Trillium Lane, Minneapolis, Minnesota 55435 (612/922-0515). I assisted in preparation of evidence and researched and wrote the trial brief arguing that the antenuptial agreement should control the property division. The case settled with a favorable result for our client on the day of trial after lengthy arguments in chambers.

An antenuptial agreement such as the one in this case is a valid and enforceable contract favored by public policy, and my experience in this case convinced me of the great value of such agreements for certain clients.

(9) The First National Bank of Chicago v. Larson Industries, Inc., Hennepin County District Court; settlement advantageous

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 23

to our client Larson Industries was achieved subsequent to favorable pre-trial decision by Judge A. Paul Lommen early in 1976.

Co-counsel was Edward J. Parker, Minnesota Court of Appeals, 25 Constitution Avenue-#313, St. Paul, MN 55155 (612/297-1007); opposing counsel was Stephen H. Cohen, 33 South Fifth Street, Minneapolis, Minnesota 55402 (612/339-4911).

Plaintiff bank sued in Minnesota district court for injunctive relief against Larson Industries, a Minnesota corporation, based on the parties' loan agreement. Larson then served a multi-million dollar counterclaim containing contract and tort claims and demanded a jury trial. The bank attempted to appear specially on the counterclaim to seek its dismissal on several grounds, arguing that jurisdiction over it was properly in the federal bankruptcy court and that claims can only be brought against a national bank in the district of its principal place of business. The court ruled in favor of our client and against the bank, necessitating its litigating the counterclaim in what it saw as an undesirable forum for those issues.

(10) Griswold & Rauma, Architects v. Aesculapius Corp., 301 Minn. 121, 221 N.W.2d 556 (1974); action for fee for architectural services; Supreme Court reversed trial court; Norman L. Newhall, 4200 IDS Center, Minneapolis, Minnesota 55402 (612/371-3211) tried the case and appeared at oral argument on appeal; as a law clerk, I prepared the appeal, researched and developed the issues, and wrote the appellant's brief for the architects.

Our client sought to foreclose a lien for unpaid architectural services, but the trial court instead ordered that fees already received be returned. The Supreme Court reversed because there was no maximum cost guarantee and no large cost override, the architect's client had approved substantial changes to the plan, and the architect was prepared to reduce costs if desired.

Case is significant because it established a new rule in Minnesota for factors to be considered in determining the effect on the compensation of an architect or building contractor when the cost of construction exceeds an agreed maximum cost figure. Supreme Court opinion closely followed the analysis and factors I developed in appellant's brief.

## Senate Judicial Nominee Questionnaire

Diana E. Murphy

Page 24

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

The most significant legal activities I have pursued have been those coming before me as a U.S. District Court Judge.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will be bound by the Code of Judicial Conduct and, if in doubt, contact the Judicial Conference Conduct Committee for advice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 25

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

1993 Financial Disclosure Report attached. See Appendix V.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Financial net worth statement follows (with schedules).

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 26

FINANCIAL STATEMENT  
 Net Worth

ASSETS

Cash on hand and in checking accounts	18,500
Money market funds (schedule attached)	1,892,521
CBS stock (schedule attached)	1,150,050
Government securities and municipal bonds (schedule attached)	13,599,078
Real estate owned (schedule attached)	790,100
Autos	25,000
Other personal property	105,000
Spouse's interest in Ann Hynes Murphy Trust (Trust assets consist of municipal bonds and CBS stock)	5,496,323
Norwest asset management trust	225,220
Spouse's Norwest asset management trust	1,207,370
Individual Retirement Account (Robt. W. Baird & Co.)	24,215
Spouse's Individual Retirement Account (Robt. W. Baird & Co.)	125,143
Individual Retirement Account, Norwest Bank	6,522
Spouse's Individual Retirement Account, Norwest Bank	<u>6,522</u>
	24,671,564

LIABILITIES

NET WORTH:

0  
\$24,671,564

GENERAL INFORMATION

Are any assets pledged?	No
Are you defendant in any suits or legal actions?	No
Have you ever taken bankruptcy?	No



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 27

Money Market Funds Owned-Schedule I

Norwest Money Market Funds (tax-exempt funds)

Diana Murphy Account	134,440
Joseph Murphy Accounts	1,020,086
	400,205
Joint Account	<u>288,127</u>
	1,842,858

Piper Jaffray Money Market Funds (tax-exempt funds)

Diana Murphy Account	28,880
Joseph Murphy Account	<u>20,783</u>
	49,663
	<hr/>
	1,892,521

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 28

CBS Stock Owned-Schedule II

	<u># of Shares</u>	<u>Value*</u>
Diana Murphy	457	125,675
Joseph Murphy	3,725	1,024,375

\* Computed at market price \$275 per share.

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 29

Government Securities and  
Municipal Bonds-Schedule III

Joseph Murphy  
 (list of holdings attached as Schedule IIIA)

government securities	2,994,931
municipal bonds	<u>8,849,147</u>

11,844,078

Diana Murphy  
 (list of holdings attached as Schedule IIIB)

government securities	400,000
municipal bonds	<u>1,055,000</u>

1,455,000

Municipal bonds held at Piper Jaffray

Joseph Murphy - Ramsey Co.	100,000
Diana Murphy - Ramsey Co.	100,000
- Chaska	<u>100,000</u>

300,000

13,599,078

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 30

Real Estate Owned-Schedule IV

Homestead:	2116 West Lake of Isles Minneapolis, MN	
	Assessed Value:	533,500
Lake Cabin:	Cook County, MN	
	Assessed Value:	256,600

Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 31

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

National Association for Public Interest Law Fellowships for Equal Justice

Board of Directors, 1992-present

Committee to select fellowship winners, 1992-present.

Organized program to provide counsel for pro se plaintiffs in constitutional and civil rights cases in federal district court in Minnesota.

Organized Eighth Circuit Gender Bias Task Force, 1993; I presently serve as a special consultant to the task force.

Judges Association representative to Urban Coalition Task Force on Sentencing Disparities, 1976-1977 (concerned with sentencing disparities affecting minority defendants).

Amicus (organization works with prisoners to prevent recidivism)

Board of Directors, 1976-1980.

Executive Advisory Board Victims Crisis Centers, 1977.

Harriet Tubman Battered Women's Shelter Board of Directors.



Senate Judicial Nominee Questionnaire  
 Diana E. Murphy  
 Page 32

Operation de Novo (Hennepin County Pre-Trial Diversion Program)

Board of Directors, 1971-1976  
 Chair of Board, 1974-1975

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What you have done to try to change these policies.

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

No selection commission was involved. My name was recommended to the President for appointment to the United States Court of Appeals for the Eighth Circuit by Senators Paul Wellstone and David Durenberger. I was interviewed by the FBI on June 22, by staff from the Department of Justice and the White House Counsel on July 1, and by a representative of the American Bar Association on July 2, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue or question? If so, please explain fully.

No.

Senate Judicial Nominee Questionnaire  
Diana E. Murphy  
Page 33

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of any administrator with continuing oversight responsibilities.

A federal judge is sworn to follow the law and to defend the Constitution. The judge must act within her jurisdiction and only when a case or controversy is presented.

I believe in the wisdom of the separation of powers, and I believe cases must be decided on the particular facts established by the record and within the applicable law. I view my role as a judge to be one of applying the law, as set by the legislative body and by controlling judicial precedent, to the facts of the individual case.

I consider it inappropriate to take on the responsibility of federal judge with any label in mind, including that of "judicial activism."

Report Required by the Ethics  
Reform Act of 1989, Pub. L. 101-194  
November 30, 1989  
(5 U.S.C. App. 6, 101-192)

**I. POSITIONS.** (Reporting individual only; see pp. 7-8 of Instructions.)

NAME OF ORGANIZATION/ENTITY

Director Federal Judicial Center

Director Federal Judges Association

Director Bush Foundation

## II. AGREEMENTS. (Reporting individual only; see pp. 8-9 of Instructions.)

PARTIES AND TERMS

☒ NONE (No reportable agreements)

### III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

SOURCE AND TYPE

GROSS INCOME  
(YOURS, not spouse's)

**NONE** (No reportable non-investment income)

	<u>Royalties from published writings (S)</u>	\$ 0.00
2		\$
3		\$
4		\$
5		\$

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Murphy, Diana E.Date of Report  
05/13/94

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp. 12-14 of Instructions.)

SOURCE

DESCRIPTION

☐ NONE (No such reportable reimbursements or gifts)

1	Natl Assn of Public Int. Law	1/23-24/93 Travel expenses for meeting \$336.75
2	American Bar Association	2/7/93 Travel exp. for committee mtg \$545.50
3	Federal Judges Association	5/16-19/93 Trav per diem for bd mtg/conf \$432.00
4	American Bar Association	10/29-31/93 Trav exp for committee mtg \$569.50
5		
6		
7		

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp. 15-16 of Instructions.)

SOURCE

DESCRIPTION

VALUE

☐ NONE (No such reportable gifts)

1	Minneapolis Club	Honorary membership-permits	\$ 0.00
2	(downtown club with	use of facilities at reg. mtg	\$ 0.00
3	eating and meeting	w/o paying dues; no member rts	\$ 0.00
4	facilities)	(voting etc) Value uncertain.	\$ 0.00

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of the spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp. 16-17 of Instructions.)

CREDITOR

DESCRIPTION

VALUE CODE

☒

NONE (No reportable liabilities)

1			
2			
3			
4			
5			
6			
7			

\* VALUE CODES: J = \$15,000 or less K = \$15,001 - \$50,000 L = \$50,001 - \$100,000 M = \$100,001 to \$250,000  
N = \$250,001 - \$500,000 O = \$500,001 - \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Murphy, Diana E.

Date of Report

05/13/94

## VII. Page 1 INVESTMENTS AND TRUSTS -- income, value, transactions

(Includes spouse, dependent child)

and dependent child(ren) See pp. 18-20 for instructions

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)(W)" for separate ownership by spouse, "(C)" for ownership by dependent child.  Place "(X)" after each asset exempt from disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Ant. Code (A-F)	(2) Type (e.g., Div., Rent, Int.)	(1) Value Code (L-P)	(2) Value Method Code (a-w)	(1) Type (e.g., buy, sell, merge, reprop.)	If not exempt from disclosure			
					(2) Date: Month-Day	(3) Value Code (L-P)	(4) Gain Code (A-W)	(5) Identity of buyer/seller (if private transaction)	
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Ind'l Retirement Acct. - Robt W Baird & Co., Milw., WI		None	K	T					
2 Asset Mgmt Trust (tax-exempt) MN Fund., Norwest Bk., Mpls, MN	D	Int	M	T					
3 Prime Value Funds (tax-exempt) MN Fund., Norwest Bk., Mpls, MN	C	Int	N	T					
4 Ind'l Retirement Acct., Norwest Bank, Mpls., MN		None	J	T					
5 Prime Value Funds (tax-exempt) MN Fund., Norwest Bk., Mpls, MN	B	Int	N	T					
6 Asset Mgmt Trust (S) (tax-exempt) MN Fund., Norwest Bk., Mpls, MN	F	Int	P	T					
7 Prime Value Funds (tax-exempt) MN Fund., Norwest Bk., Mpls, MN	E	Int	D	T					
8 Checking Acct. - Norwest Bk., Mpls., MN	A	Int	K	T					
9 Ann M Murphy Trust (S) Norwest Bank	G	Int	P	W					
10 Frederick E. Murphy Trust (S) 1st Trust Co, St. Paul	G	Int	P	W	distr**	3/3	P	B	
11 Ind'l Retirement Acct (S) Robt W Baird & Co., Milw., WI		None	L	T					
12 Ind'l Retirement Acct (S) Norwest Bank, Mpls, MN		None	J	T					
13 Bonds - Anoka Co., MN	C	Int	K	T					
14 Bonds - Inver Grove Hts., MN	C	Int	K	T					
15 U.S. Treasury Bonds	E	Int	M	T					
16 Bonds - Apple Valley, MN (S)	C	Int	K	T					
17 Bonds - Apple Valley, MN (S)	C	Int	K	T					
18 Bonds - Bloomington, MN (S)	D	Int	L	T	se.1	2/24	L	E	
1 Income/Gain Codes: (See Col. B1 & B2)	A=\$1,000 or less E=\$15,001 to \$50,000		B=\$1,001 to \$2,500 F=\$50,001 to \$100,000		C=\$2,501 to \$5,000 G=\$100,001 to \$1,000,000		D=\$5,001 to \$15,000 H=More than \$1,000,000		
2 Value Codes: (See Col. C1 & C3)	J=\$15,000 or less W=\$250,001 to \$500,000		K=\$5,001 to \$50,000 O=\$500,001 to \$1,000,000		L=\$50,001 to \$100,000 P=More than \$1,000,000		M=\$100,001 to \$250,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market		

\*\* Supplemental distribution 5/13 Value J Gain A, CBS shares listed #115 and 116 in Part V



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Murphy, Diana E.Date of Report  
05/13/94VII. Page 2 INVESTMENTS and TRUSTS -- income, value, transactions  
(and dependent children. See pp. 18-26 of Instructions)

(Includes those of spouse

A. Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using the parenthetical "J" for joint ownership of report- ing individual and spouse, "S" for separate ownership by spouse, "DC" for ownership by dependent child. Place "X" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure				
	Amt. 1 Code (A-M)	Type (e.g., div. rent or int.)	Value 1 Code (J-P)	Value 2 Method 3 Code (Q-W)	Date: Month- Day	(3) Value 2 Code (J-P)	(4) Gain/L Code (A-M)	(5) Identity of buyer/seller (if private transaction)		
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
19 Bonds - Douglas Co., MN (S)	D	Int	L	T						
20 Bonds - Fairmont, MN (S)	D	Int	L	T	call	7/16	L	A		
21 Bonds - Fairmont, MN (S)	D	Int	L	T	call	7/16	L	A		
22 Bonds - Golden Valley, MN (S)	D	Int	L	T						
23 Bonds - Hastings, MN (S)	D	Int	L	T						
24 Bonds - Isanti Co., MN (S)	D	Int	L	T						
25 Bonds - Maple Grove, MN (S)	D	Int	L	T						
26 Bonds - Metropolitan Council, MN (S)	C	Int	L	T	call	12/1	L	A		
27 Bonds - Minneapolis, MN (S)	D	Int	L	T						
28 Bonds - Minneapolis Public Housing Authority (S)	E	Int	M	T						
29 Bonds - Minnesota (S)	C	Int	K	T						
30 Bonds - Minnesota (S)	D	Int	L	T						
31 Bonds - Minnesota Housing Finance Agency (S)	D	Int	L	T						
32 Bonds - Minnesota Housing Finance Agency (S)	D	Int	L	T						
33 Bonds - Minnesota Housing Finance Authority (S)	D	Int	M	T						
34 Bonds - Northfield, MN (S)	D	Int	L	T						
35 Bonds - Oakdale, MN (S)	D	Int	L	T						
36 Bonds - Oakdale, MN (S)	D	Int	L	T						
1 Income/Gain Codes: (See Col. B1 & B4)	A=\$1,000 or less B=\$1,001 to \$50,000		C=\$1,001 to \$2,500 D=\$2,501 to \$5,000 E=\$5,001 to \$100,000		F=\$100,001 to \$1,000,000 G=\$1,000,001 to \$5,000,000 H=\$5,000,001 to \$15,000,000 I=More than \$15,000,000		J=More than \$15,000,000			
2 Value Codes: (See Col. C1 & C3)	J=\$15,000 or less K=\$250,001 to \$500,000		L=\$15,001 to \$50,000 M=\$50,001 to \$100,000 N=\$100,001 to \$1,000,000		O=\$100,001 to \$1,000,000 P=\$1,000,001 to \$5,000,000 Q=\$5,000,001 to \$15,000,000 R=More than \$15,000,000		S=\$100,001 to \$250,000			
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		T=Cash/Market			

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting	Date of Report
Murphy, Diana E.	05/13/94

VII. Page 3 INVESTMENTS and TRUSTS -- income, value, transactions (Indicates those of spouse and dependent children. See pp. 18-20 of Instructions.)

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transaction during reporting period				
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, merger, recap, etc.)	(2) Date: Month/Day	(3) Value: \$	(4) Gain: \$	(5) Identity of buyer/seller (if private transaction)
	Int. Code (A-H)	Type (e.g., Div., rent or Int.)	Value Code (J-P)	Value Method Code (Q-W)					
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
37 Bonds - Plymouth, MN (\$)	D	Int	L	T					
38 Bonds - Plymouth, MN (\$)	D	Int	L	T					
39 Bonds - Proctor, MN (\$)	D	Int	L	T					
40 Bonds - St. Cloud, MN (\$)	D	Int	L	T					
41 Bonds - St. Cloud, MN (\$)	D	Int	L	T					
42 Bonds - St. Paul, MN (\$)	E	Int	M	T					
43 Bonds - U.S. Treasury Bonds (\$)	E	Int	M	T					
44 Bonds - U.S. Treasury Bonds (\$)	D	Int	L	T					
45 Bonds - U.S. Treasury Notes (\$)		None	N	T					
46 Bonds - University of Minnesota (\$)	D	Int	L	T					
47 Bonds - University of Minnesota (\$)	E	Int	M	T					
48 Bonds - University of Minnesota (\$)		None	P	T					
49 Bonds - Willmar, MN (\$)	B	Int	M	T	call	7/1		A	
50 Bonds - Winona, MN (\$)	D	Int	L	T					
51 Bonds - Anoka, MN	C	Int	K	T					
52 Bonds - Inver Grove Hts., MN	C	Int	K	T					
53 Bonds - Minnesota Housing Finance Authority	C	Int	K	T					
54 Bonds - South St. Paul, MN	C	Int	K	T					
1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less F=\$15,001 to \$50,000	B=\$1,001 to \$2,500 G=\$25,001 to \$50,000	C=\$2,501 to \$5,000 H=\$50,001 to \$100,000	D=\$5,001 to \$10,000 I=\$100,001 to \$1,000,000					
2 Value Codes: (See Col. C1 & D3)	J=\$15,000 or less K=\$250,001 to \$500,000	L=\$15,001 to \$50,000 M=\$500,001 to \$1,000,000	N=\$50,001 to \$100,000 O=\$100,001 to \$250,000	P=\$250,001 to \$500,000 Q=\$500,001 to \$1,000,000					
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market					

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Murphy, Diana E.

Date of Report

05/13/94

## VII. Page 4 INVESTMENTS and TRUSTS -- income, value, transactions (Includes trust of spouse and dependent children; See pp. 18-26 of Instructions.)

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(s)" for joint ownership of reporting individual and spouse, "(s)" for separate ownership by spouse, "(c)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt.1 Code (A-W)	(2) Type (e.g., div., rent or int.)	(1) Value2 Code (J-P)	(2) Value2 Method3 Code (Q-W)	(1) Type (e.g., buy, sell, merger, redemption)	If not exempt from disclosure			
						(2) Date: Month-Day	(3) Value2 Code (J-P)	(4) Gain/Loss Code (A-F)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
55 Bonds - University of Minnesota	C	Int	L	T					
56 Bonds - White Bear, MN	C	Int	K	T					
57 Bonds - Apple Valley, MN (S)	C	Int	K	T	call	3/1	K	-	
58 Bonds - Apple Valley, MN (S)	C	Int	K	T	call	8/1	K	-	
59 Bonds - Chanhassen, MN (S)	C	Int	K	T					
60 Bonds - Hennepin Co. (S)	C	Int	K	T					
61 Bonds - Maplewood, MN (S)	C	Int	K	T					
62 Bonds - Maplewood, MN (S)	C	Int	K	T					
63 Bonds - Mendota Hts, MN (S)	C	Int	K	T					
64 Bonds - St. Cloud, MN (S)	C	Int	K	T					
65 Bonds - Shorewood, MN (S)	C	Int	K	T					
66 Bonds - Eden Prairie, MN	D	Int	L	T					
67 Bonds - Farmington, MN	B	Int	K	T					
68 Bonds - Woodbury, MN	B	Int	K	T	call	2/1	K	-	
69 Bonds - Burnsville, MN (S)	D	Int	L	T					
70 Bonds - White Bear, MN (S)		None	M	T					
71 Bonds - Chanhassen, MN (S)	C	Int	K	T					
72 Bonds - Marshall, MN (S)	B	Int	L	T					
1 Income/Gain Codes: (See Col. B1 & D6)	A=\$1,000 or less B=\$1,001 to \$500,000		B=\$1,001 to \$2,500 C=\$2,501 to \$100,000		C=\$2,501 to \$5,000 D=\$5,001 to \$1,000,000		E=\$5,001 to \$15,000 F=\$15,001 to \$1,000,000		
2 Value Codes: (See Col. C1 & D3)	J=\$15,000 or less K=\$15,001 to \$500,000		L=\$15,001 to \$50,000 M=\$50,001 to \$1,000,000		N=\$50,001 to \$100,000 O=\$100,001 to \$1,000,000		P=\$100,001 to \$250,000 Q=\$250,001 to \$1,000,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Cost (real estate only) V=Other		S=Assessment W=Estimated		X=Cash/Market		



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Margaret, Diana E.Date of Report  
05/13/94

## VII. Page 6 INVESTMENTS and TRUSTS -- Income, value, transactions (Includes those of spouse and dependent children. See pp 18-26 of Instructions.)

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amt.1 Code (A-H)	Type (e.g., div., rent, interest) Code (I-N)	Value Method2 Code (Q-W)	Value Method3 Code (X-W)	(1) Type (e.g., buy, sell, transfer, redemption) Code (Y-Z)	(2) Date: Month- Day	(3) Value2 Code (J-P)	(4) Gain1 Code (A-H)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
91 Bonds - Eagan (S)	D	Int	.	T					
92 Bonds - Hopkins (S)	D	Int	.	T					
93 Bonds - Metro Council (S)	C	Int	.	T					
94 Bonds - Minneapolis (S)	E	Int	.	T					
95 Bonds - Minneapolis/St. Paul Housing (S)	C	Int	.	T					
96 Bonds - Minnesota State (S)	D	Int	.	T					
97 Bonds - Osseo (S)	D	Int	.	T					
98 Bonds - Ramsey Co (S)	D	Int	.	T					
99 Bonds - St. Paul Schools (S)	D	Int	.	T					
100 U.S. Treasury Bond (S)	B	Int	.	T					
101 U.S. Treasury Bond (S)	E	Int	.	T					
102 U.S. Treasury Bond (S)	D	Int	.	T					
103 U.S. Treasury Bond (S)	E	Int	.	T					
104 Bonds - Maplewood Bank (S)	D	Int	.	T					
105 Bonds - Minnesota State Bank (S)	D	Int	.	T					
106 Bonds - Minnesota MFA (S)	D	Int	.	T					
107 Bonds - Ramsey Co. (S)	D	Int	.	T					
108 Bonds - Wayzata School (S)	E	Int	.	T					
1 Income/Gain Codes: (See Col. B1 & B4)	A=\$1,000 or less E=\$15,001 to \$50,000		B=\$1,001 to \$2,500 F=\$50,001 to \$100,000		C=\$2,501 to \$5,000 G=\$100,001 to \$1,000,000		D=\$5,001 to \$15,000 H=More than \$1,000,000		
2 Value Codes: (See Col. C1 & C3)	J=\$15,000 or less M=\$250,001 to \$500,000		K=\$5,001 to \$50,000 O=\$50,001 to \$1,000,000		L=\$50,001 to \$100,000 P=More than \$1,000,000		N=\$100,001 to \$250,000		
3 Value Method Codes: (See Col. C2)	Q=Appraisal U=Book Value		R=Cost V=Fair market value (only)		S=Assessment W=Estimated		T=Cash/Market		



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Murphy, Colana E.

Date of Report

05/13/94

## VII. Page 7 INVESTMENTS AND TRUSTS -- income, value, and transactions (Includes those of spouse and dependent children, See pp. 19-26 of Instructions)

A. Description of Assets (including trust assets)  Indicate where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Change in value during reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1)	(2)	(3)	(4)	(5)
	Asset Code (A-M)	Type (e.g., div., rent or int.)	Value1 Code (A-M)	Value2 Code (A-M)	Type (e.g., buy, sell, merger, redemption)	Date: Month-Day	Value2 Code (A-M)	Gain1 Code (A-M)	Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
109 Stock - CBS		Div	K						
110 Stock - CBS (S)	A	Div	N						
111 Stock - CBS	A	Div	K		merger*	4/15	K		
112 Stock - CBS	A	Div	K		merger*	9/14	K		
113 Stock - CBS (S)	B	Div	N		merger*	4/15	N		
114 Stock - CBS (S)	A	Div	N		merger*	9/14	N		
115 Stock - CBS (S)	A	Div	L		dist'd	4/15	L		
116 Stock - CBS (S)	A	Div	N		dist'd	9/14	N		
117 Tax-exempt MM Fund, Piper Jaffray, Mpls, MN	B	Int	N						
118 Tax-exempt MM Fund, Piper Jaffray, Mpls, (S)	A	Int	N						
119 Bonds - Chanhassen (S)	C	Int	K						
120 Bonds - Eden Prairie (S)	D	Int	L		buy	4/7	L		
121 Bonds - Eden Prairie (S)	D	Int	L		buy	4/7	L		
122 Bonds - Eden Prairie (S)	D	Int	L		buy	4/7	L		
123 Bonds - Maple Grove (S)	B	Int	K		buy	9/20	K		
124 Bonds - Maple Grove (S)	B	Int	K		buy	9/20	K		
125 Bonds - Maple Grove (S)	A	Int	K		buy	9/20	K		
126 Bonds - Maplewood (S)	D	Int	N		buy	9/23	N		
1 Income/Gain Codes: A=\$1,000 or less; E=\$15,001 to \$50,000; B=\$1,001 to \$10,000; F=\$50,001 to \$100,000; C=\$2,501 to \$5,000; G=\$100,001 to \$1,000,000; D=\$5,001 to \$15,000; H=More than \$1,000,000 2 Value Codes: J=\$15,000 or less; K=\$15,001 to \$50,000; L=\$50,001 to \$100,000; M=\$100,001 to \$250,000 3 Value Method Codes: Q=Appraisal; U=Book Value; R=Cost (real estate only); V=Other; S=Assessment; T=Cash/Market									

\* 2/5/92 merger reported last year; these shares were released subsequently in 1993.



## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Murphy, Diana E.Date of Report  
05/13/94

## VII. Page 9 INVESTMENTS and TRUSTS -- income, value, transactions (includes those of spouse and children -- children See pp 18-26 of Instructions)

A. Description of Assets (including trust assets) Indicate where applicable, owner of the asset by using in the parenthetical "(J)" for joint ownership of reporting individual, and "(S)" for separate ownership by spouse, "(OC)" for ownership by dependent child. Place "1" in front of each asset exempt from disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-F)	(2) Type (e.g., div., rent, or int.)	(1) Value Code (L-P)	(2) Value Method Code (Q-W)	If not exempt from disclosure				
					(1) Type (e.g., buy, sell, merger, redemption)	(2) Date: Month Day	(3) Value Code (J-P)	(4) Gain/Loss Code (A-W)	(5) Identity of buyer/seller (if private transaction)
<b>SOLE</b> (No reportable assets, or transactions)									
145 Bonds - Minnesota St. Paul Housing	A	Int	J	T	call	6/1		A	
146									
147									
148									
149									
150									
151									
152									
153									
154									
155									
156									
157									
158									
159									
160									
161									
162									
1 Income/Gain/Losses: (See Col. #1 & 2)	A=\$1,000 or less E=\$15,001 to \$50,000	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000	C=\$2,501 to \$5,000 G=\$100,001 to \$1,000,000	D=\$5,001 to \$15,000 H=more than \$1,000,000					
2 Value Codes: (See Col. C & D)	J=\$15,000 or less M=\$250,001 to \$500,000	K=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000	L=\$50,001 to \$100,000 P=more than \$1,000,000	N=\$100,001 to \$250,000					
3 Value Method Codes: (See Col. E)	Q=Appraisal U=Stock Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market					

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting  
Murphy, Diana E.Date of Report  
05/13/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

Part VII, Asset Management Trust (entry #3) asset value code corrected to "M"  
(clerical error from previous report)

\* Assets of the Hann H Murphy Trust consist, and Frederick E Murphy Trust  
consisted, of CIE stock and government bonds of unknown identity.

## I. POSITIONS (Cont'd.)

POSITION	NAME OF ORGANIZATION/ENTITY
Director and Treasurer	Minneapolis United Way
Director	Twin Cities Public TV
Director and Vice Chair	Science Museum of Minnesota
Director and Treasurer	University of Minnesota Foundation
Regent	St. John's University
Trustee	University of St. Thomas
Director	National Association for Public Interest Law
	Fellowships for Equal Justice

## FINANCIAL DISCLOSURE REPORT

Name of Person Reporting

Murphy, Diana E.

Date of Report:

05/13/94

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all the information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, 501 et. seq., 5 U.S.C. 7353 and Judicial Conference regulations.

Signature

*Diana E. Murphy*

Date

*5/13/94*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, 104, AND 18 U.S.C. 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Committee on Financial Disclosure  
Administrative Office of the  
United States Courts  
Washington, D.C. 20544



UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

Questionnaire for Judicial Nominees

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Sven Erik Holmes

2. Address: List current place of residence and office address(es).

(Residence) 3337 Rittenhouse Street, N.W.  
Washington, D.C. 20015

(Business) Williams & Connolly  
725 Twelfth Street, N.W.  
Washington, D.C. 20005

3. Date and place of birth.

February 13, 1951, Grand Junction, Colorado

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Wife: Lois Romano

Occupation: Journalist

Employer: The Washington Post (since 1981)  
1150 15th Street, N.W.  
Washington, D.C. 20071

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Harvard University (1969-1973), B.A. (1973)  
Oklahoma City University School of Law (1975-1976)  
University of Oklahoma Graduate Business School (1976-1977)  
University of Virginia Law School (1977-1980), J.D. (1980)  
Georgetown University Law School (1985-1987), LL.M.  
(Taxation) (1987)

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations,

nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1973-1975	Campaign Coordinator, Boren for Governor
1975-1977	Administrative Assistant, Oklahoma Governor David L. Boren
1980-1981	Law Clerk, Hon. Thomas R. Brett, U.S. District Court (Northern District of Oklahoma)
1981-1983	Associate, Doerner, Stuart, Saunders, Daniel & Anderson, Tulsa, Oklahoma
1983-1985	Executive Director, Democrats for the 80's, Washington, D.C.
1985	Special Tax Counsel, Senator David L. Boren
1985-1987	Associate, Williams & Connolly, Washington, D.C.
1987-1989	General Counsel and Staff Director, Senate Select Committee on Intelligence
1987	Designated Staff, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition
1989	Club Counsel, Baltimore Orioles (Vice President, 1989-1993)
1989-Present	Associate/Partner, Williams & Connolly, Washington, D.C.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are

or have been a member and give the titles and dates of any offices which you have held in such groups.

Oklahoma Bar Association  
American Bar Association (State and Local  
Taxes Committee)  
District of Columbia Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies.

None.

Please list all other organizations to which you belong.

Blessed Sacrament Church  
Lafayette School PTA  
Chevy Chase Baptist Church Children's Center,  
Steering Committee  
University of Virginia Law School Alumni Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Oklahoma Supreme Court, 1980  
United States District Courts of Oklahoma (Northern,  
Eastern and Western Districts), 1980  
United States Court of Appeals, Tenth Circuit, 1980  
United States District Court, District of Columbia, 1985  
United States Court of Appeals, District of Columbia, 1985  
United States Court of Appeals, Fourth Circuit, 1986  
United States Tax Court, 1985  
United States Court of Federal Claims, 1986  
Supreme Court of the United States, 1994

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Oklahoma Ad Valorem Tax: The System is Workable, Vol. 53,  
No. 25, Oklahoma Bar Journal, 1518 (1982)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. January 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Appointed government positions:

1975-1977	Administrative Assistant, Oklahoma Governor David L. Boren
1980-1981	Law Clerk, Hon. Thomas R. Brett, U.S. District Court (Northern District of Oklahoma)
1985	Special Tax Counsel, Senator David L. Boren
1987-1989	General Counsel and Staff Director, Senate Select Committee on Intelligence
1987	Designated Staff, Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition

17. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school:

Following graduation from law school, in 1980-1981, I clerked for Judge Thomas R. Brett of the Northern District of Oklahoma.<sup>1/</sup> As a law clerk, I prepared draft opinions and decisions, jury instructions and other documents necessary for the Judge to carry out his responsibilities. I also was in the courtroom for many cases, both civil and criminal. In sum, the clerkship was a comprehensive tutorial in legal practice before the federal courts.

In 1981, I commenced practice with Doerner, Stuart, Saunders, Daniel & Anderson ("Doerner, Stuart"),<sup>2/</sup> where I had been a summer clerk prior to my clerkship. My practice at Doerner, Stuart was primarily civil litigation, with emphasis on business disputes. As a litigation associate, I researched and drafted legal papers, conducted discovery, interacted with clients and appeared in court. My most significant experiences in court during this period are described in the response to Question 18 below. My focus on business law caused my legal career in later years to move away from litigation to a corporate and tax practice.

From 1983-1984, I was the Executive Director of Democrats for the 80's, a political action committee based in Washington, D.C. The committee was founded and chaired by Pamela Harriman, now the United States Ambassador to France.<sup>3/</sup> Democrats for the 80's engaged in political activities on behalf of Democratic candidates for state and federal offices. This position continued through the 1984 elections.

In 1985, I joined Williams & Connolly in Washington, D.C. To improve my professional skills, I entered the

---

<sup>1/</sup> Judge Brett may be contacted at the United States District Court, 333 4th Street, Tulsa, Oklahoma 74103, (918) 581-7966.

<sup>2/</sup> Doerner, Stuart, Saunders, Daniel & Anderson has been re-named Doerner, Stuart, Saunders, Daniel, Anderson & Biolchini and is located at Suite 500, 320 S. Boston Avenue, Tulsa, Oklahoma 74103, (918) 582-1211.

<sup>3/</sup> Ambassador Pamela Harriman may be contacted at the United States Embassy, Paris, France, 011-33-1229612-02.



masters program in taxation at Georgetown University. I received my LL.M. in taxation from Georgetown in 1987.

From 1985 through 1987, I practiced business and tax law at Williams & Connolly.<sup>4/</sup> I appeared in court occasionally during this period, while a preponderance of my practice was business transactions and non-litigation resolution of business disputes. It should be noted, however, that Williams & Connolly is primarily a litigation firm. Accordingly, as part of my business practice, I provide advice in connection with litigation matters.

In 1987, I became General Counsel and Staff Director of the Senate Select Committee on Intelligence under Chairman David Boren<sup>5/</sup> and Vice Chairman William Cohen.<sup>6/</sup> During 1987, I simultaneously served on the staff of the Senate Select Committee on Secret Military Assistance to Iran and the Nicaraguan Opposition (the "Iran-Contra Committee"). As general counsel, I drafted legislation, prepared hearings and directed committee investigations and oversight.

In 1989, I became Club Counsel for the Baltimore Orioles. The Orioles were in a period of transition following the purchase of the team by a new ownership group which included as President Larry Lucchino, a partner at Williams & Connolly.<sup>7/</sup> Later that year I became a Vice President of the Orioles, a position which I held until the team was sold in 1993. As a Vice President, I was involved in every aspect of the organization, which has annual gross revenues in excess of \$85 million. As a member of the Orioles' budget committee, I helped to develop the Orioles' management and budget procedures, which are recognized as one of the most efficient and effective in baseball. My background as a business attorney, and my experience in Governor David Boren's office in 1975-1977 as the assistant with staff responsibility for Oklahoma's annual budget,

---

<sup>4/</sup> Williams & Connolly is located at 725 Twelfth Street, N.W., Washington, D.C. 20005, (202) 434-5000.

<sup>5/</sup> Senator David L. Boren may be contacted at the Russell Senate Office Building, Washington, D.C. 20510, (202) 224-4721.

<sup>6/</sup> Senator William S. Cohen may be contracted at the Hart Senate Office Building, Washington, D.C. 20510, (202) 224-3121.

<sup>7/</sup> Larry Lucchino may be contacted at Williams & Connolly, 725 Twelfth Street, N.W., Washington, D.C. 20005, (202) 434-5544.

prepared me to play an active role in the team's business operations. In addition, I was chairman of the Orioles' long-term planning committee, "Project '95", which focused on a number of issues including community involvement and outreach, minority marketing and affirmative action.

In 1989, I returned to Williams & Connolly. My practice during the past five years has been diverse, including business transactions, non-litigation dispute resolution, litigation and government investigations. My practice reflects a broad interest and experience in all areas of the law, litigation and non-litigation, private practice and public service.

During this period, I have appeared in court occasionally. My experiences in court are described in the response to Question 18 below.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

As described above, my practice has evolved over the years. Initially, my practice was primarily litigation. After clerking for Judge Thomas R. Brett in the U.S. District Court, I practiced as a litigator until 1983 at the firm of Doerner, Stuart, Saunders, Daniel & Anderson in Tulsa, Oklahoma.

From 1985-1987, I was a business associate at Williams & Connolly. My practice during this period was primarily corporate and tax law.

In 1989, after two years with the Senate Select Committee on Intelligence and 6 months as Club Counsel of the Baltimore Orioles, my practice became more varied. My current practice includes business transactions, business disputes, litigation and government investigations. This practice involves many different aspects of the law and draws from my various experiences over the years.

- 2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

Due to the diversity of my practice, there are no "typical" clients. For example, during the past 12 months, I have represented business entities in large financial transactions, individuals in disputes which resulted in a restructuring of their business relationships, individuals terminated under employment agreements (in one case litigating the matter through arbitration), an individual in an investigation by a Congressional committee, a

philanthropist in a dispute with his charitable donee, and a major league baseball team in a variety of business matters.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

While at Doerner, Stuart from 1981 to 1983, I appeared in court frequently. While at Williams & Connolly from 1985 to 1987 and 1989 to the present, I have appeared in court occasionally. My most significant experiences in court are described in the response to Question 18 below.

2. What percentage of these appearances was in:

- (a) federal courts; 40%
- (b) state courts of record; 30%
- (c) other courts. (Arbitration) 30%

3. What percentage of your litigation was:

- (a) civil; 100%
- (b) criminal. 0

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

One. This case, in which I was associate counsel, is described in the response to Question 18 below.

5. What percentage of these trials was:

- (a) jury; 0
- (b) non-jury. 100%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;

- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. McLoud Telephone Co. v. State Board of Equalization, 655 P.2d 1037 (Okla. 1982) (per curiam) (before the Supreme Court of Oklahoma; Justices Irwin, Barnes, Lavender, Simms, Doolin, Hargrave, Opala and Wilson and Cornish, Special Justice; Case No. 58810)

Date(s) of Representation: 1982.

Nature of Representation: Litigation of original action in the Oklahoma Supreme Court. Doerner, Stuart represented amicus curiae Public Service Company of Oklahoma ("PSO"), a public utility.

Summary: This original action in the Oklahoma Supreme Court arose out of an order by the State Board of Equalization which directed that all property owned by public service corporations within the State should be assessed for tax purposes at 26 percent of its market value. Most of the major public service corporations in the State, including PSO, were permitted to join the action as parties or to appear as amicus curiae. The public service corporations sought to vacate the Board's order, arguing that any assessments on their property must be within the 9 to 15 percent range established by the Oklahoma Supreme Court for all other property within the State. The amount at issue for the public service corporations affected by the Board's order was estimated at over \$100 million.

Role: As co-counsel on the case with William Anderson (Doerner, Stuart),<sup>1/</sup> I personally argued the case before the Oklahoma Supreme Court on behalf of all petitioners and amicus parties, and prepared briefs and other papers on behalf of PSO.

Disposition: The Oklahoma Supreme Court entered judgment in favor of the State Board of Equalization, holding that the Oklahoma Constitution permitted the Board to assess property owned by public service corporations using percentage levels different from the percentages applied to other property within the State.

---

<sup>1/</sup> All Doerner, Stuart attorneys referred to in Question 18 may be contacted at Doerner, Stuart, Saunders, Daniel, Anderson & Biolchini, Suite 500, 320 S. Boston Avenue, Tulsa, Oklahoma 74103, (918) 582-1211.

(Counsel for Respondent: J. Lawrence Blankenship, Esq., former General Counsel, Oklahoma Tax Commission; Derryberry, Quigley, Parrish, Solomon & Blankenship, 4800 North Lincoln Blvd., Oklahoma City, Oklahoma 73105, (405) 424-0047).

2. Public Service Company of Oklahoma v. Northwest Rogers County Fire Protection District, 675 P.2d 134 (Okla. 1984) (before the Supreme Court of Oklahoma; Justices Doolin, Barnes, Lavender, Simms, Hodges, Hargrave, Opala and Wilson; Case No. 58432)

Date(s) of Representation: 1981-1983.

Nature of Representation: Litigation in state court against an Oklahoma municipal corporation. Doerner, Stuart represented Public Service Company of Oklahoma ("PSO").

Summary: This case involved a special property tax levied by Northwest Rogers County Fire Protection District, a municipal corporation created pursuant to Oklahoma statute, to finance the cost of fire protection services in the District. PSO, as a property owner in the District, challenged the ability of the County government to levy such a tax under the Oklahoma Constitution. The amount at issue for PSO was approximately \$200,000 for each year the tax remained in effect.

Role: As co-counsel on the case with William Anderson (Doerner, Stuart), I prepared briefs and other papers and argued a successful motion for summary judgment on behalf of PSO in the Rogers County District Court.

Disposition: The Rogers County District Court granted summary judgment to PSO, holding that the statute authorizing creation of the District was unconstitutional as applied to PSO. The Oklahoma Supreme Court (one Justice dissenting) reversed and entered judgment in favor of the Fire Protection District, holding that the Oklahoma Constitution did not restrict the ability of the state legislature to authorize a County to levy a special property tax for fire protection purposes. The Supreme Court rendered its decision after I left Doerner, Stuart and the case was subsequently settled favorably.

(Counsel for Defendant: Jack Gordon, Esq., 212 S. Missouri Street, Claremore, Oklahoma 74018, (918) 341-7322).



3. Abrahams, et al. v. National Zinc Co. (before the District Court of Oklahoma, Washington County; Judge Williams; Case No. C-80-368)

Date(s) of Representation: 1981-1982.

Nature of Representation: Mass tort litigation in Oklahoma state court. Doerner, Stuart represented the National Zinc Co. ("National Zinc").

Summary: This case arose out of an alleged release of toxic substances into the atmosphere from a plant owned by National Zinc located in Bartlesville, Oklahoma. Several hundred individuals residing in the area joined in this action alleging that the spill exceeded acceptable health and safety levels and claiming total damages in excess of \$100 million for both personal injuries and property damages.

Role: As co-counsel on the case with lead counsel William Anderson (Doerner, Stuart), I conducted depositions and other discovery, prepared briefs and other papers and argued a successful motion to dismiss on behalf of National Zinc.

Disposition: After years of discovery and a series of procedural disputes, and following a successful motion to dismiss by National Zinc, the case was subsequently settled after I left Doerner, Stuart.

(Counsel for Plaintiffs: James A. Ikard, Esq., Angel & Ikard, 117 Park Avenue, Third Floor, Oklahoma City, Oklahoma 73102, (405) 232-0004).

4. Francis Oil and Gas, Inc. v. Exxon Corp., Case No. 77-C-161-B; Curtis S. Green, Dave R. Sylvan, George D. Daly, Don H. Nelson, and George B. Kaiser v. Exxon Corp., Case No. 79-C-444-E (before the United States District Court for the Northern District of Oklahoma; Judge Ellison)

Date(s) of Representation: 1982.

Nature of Representation: Breach of contract litigation in federal court. Doerner, Stuart represented Exxon Corp. ("Exxon").

Summary: This case arose out of a contract between Exxon and Francis Oil and Gas Co. ("Francis") for the purchase of oil produced from certain leases located in Texas. In a breach of contract action filed in the Northern District of Oklahoma, Francis alleged that Exxon underpaid

the amount due under the contract and pursuant to the Emergency Petroleum Allocation Act.

In addition, five individual working interest owners of the same field filed an action in the Northern District of Oklahoma asserting essentially the same claims. This second action was stayed pending a decision in the Francis case. More importantly, the same parties also filed a class action in Texas state court, which was removed to the U.S. District Court for the Western District of Texas.

The District Court in Texas entered judgment in favor of the plaintiff class. Based on this judgment, Francis moved for summary judgment in the Oklahoma case. Thereafter, the Texas decision was reversed by the United States Temporary Emergency Court of Appeals, and Exxon filed a cross-motion for summary judgment in the Oklahoma action.

**Role:** As co-counsel on the case with lead counsel G. Michael Lewis (Doerner, Stuart), I prepared briefs and other papers and appeared before the court on behalf of Exxon.

**Disposition:** Following a hearing in which Judge Ellison expressed a favorable view of Exxon's motion for summary judgment, Francis agreed to dismiss the case with prejudice and pay a portion of Exxon's legal fees.

(Counsel for Plaintiff: Frederic Dorwart, Esq. and Michael Medina, Esq., Holliman, Langholtz, Runnels & Dorwart, Suite 700, 10 E. 3rd Street, Tulsa, Oklahoma 74103-3695, (918) 584-1471).

5. Stagecoaches Unlimited, Inc. v. Metropolitan Transit Authority of Harris County, Texas ("MTA"), Case No. 81-C-859-C; MTA v. Stagecoaches Unlimited, Inc., Case No. 82-C-148-B (before the United States District Court for the Northern District of Oklahoma; Judge H. Dale Cook)

**Date(s) of Representation:** 1981-1982.

**Nature of Representation:** Breach of contract litigation in federal court. Doerner, Stuart represented the Metropolitan Transit Authority of Harris County, Texas ("MTA").

**Summary:** This case arose out of a contract between MTA and Stagecoaches Unlimited, Inc. ("Stagecoaches") to refurbish buses owned by MTA. Stagecoaches alleged that MTA had failed to make full payment for services rendered. MTA responded with a successful motion to transfer the case to the United States District Court for the Southern District of Texas, MTA's principal place of business. (Case No. 81-

C-859-C). Subsequently, Stagecoaches attempted to sell the MTA buses in its possession, purportedly to satisfy MTA's alleged indebtedness. As a result, MTA filed a second action in the Northern District of Oklahoma to enjoin the sale. (Case No. 82-C-148-13).

**Role:** As co-counsel on the case with lead counsel G. Michael Lewis (Doerner, Stuart), I prepared briefs and other papers and argued all motions in court on behalf of MTA.

**Disposition:** In the first action, the Court granted MTA's motion to transfer the case to the Southern District of Texas. In the second action, the Court entered an injunction prohibiting the sale of the MTA buses. Both cases eventually were dismissed as part of a final settlement of the action in the Southern District of Texas.

(Counsel for Defendant: Don E. Gasaway, Esq., P.O. Box 14070, Tulsa, Oklahoma 74159).

6. **Rust Communications Group., Inc. v. United States** (before the United States Claims Court; Judge Rader; Case No. 604-87T)

**Date(s) of Representation:** 1989-1990.

**Nature of Representation:** Tax litigation before the United States Claims Court. Williams & Connolly represented Rust Communications Group, Inc. ("Rust").

**Summary:** This case involved a dispute as to whether federal income taxes were due from Rust as a result of a series of sales of four radio stations it had owned. The primary issue was whether these sales were made by Rust (as contended by the Internal Revenue Service) or by its shareholders. Rust paid the amount of the alleged underpayment and brought this case in the Claims Court to recover its payment. The amount at issue approximated \$7 million in tax and interest.

**Role:** As co-counsel on the case with lead counsel Lyman Friedman (Williams & Connolly),<sup>2/</sup> I negotiated and prepared trial stipulations with government counsel, prepared motions and briefs, and presented a portion of the evidence at the trial.

---

<sup>2/</sup> All Williams & Connolly attorneys referred to in Question 18 may be contacted at Williams & Connolly, 725 12th Street, N.W., Washington, D.C. 20005, (202) 434-5000.

**Disposition:** After a trial on the merits, the Claims Court entered judgment in favor of Rust for the full amount paid to the Internal Revenue Service.

(Counsel for Defendant: Elizabeth D. DePriest, Esq., Justice Department (Tax), Claims Court Section, P.O. Box 26, Ben Franklin Post Office, Washington, D.C. 10044, (202) 724-6508).

7. Hartz Mountain Industries, Inc., et al. and Leonard Stern and Judith Peck v. Commissioner of Internal Revenue (before the United States Tax Court; Judge Powell; Case No. 353-88)

**Date(s) of Representation:** 1989-1992

**Nature of Representation:** Tax litigation before the United States Tax Court. Williams & Connolly represented Hartz Mountain Industries Inc. and its affiliated companies ("Hartz"), and Hartz executive Leonard Stern and his former wife, Judith Peck.

**Summary:** This case arose out of a dispute with the Internal Revenue Service over the tax treatment of a payment made by Hartz in connection with its settlement of a civil antitrust lawsuit. The government alleged that Hartz had tax deficiencies in excess of \$22 million. The principal issue was Hartz' deduction of approximately \$42 million in settlement payments in connection with an unrelated lawsuit. The case also involved certain real estate issues. The parties agreed, however, to litigate these real estate issues in the United States Claims Court in the companion case described in number 8 below. Hartz claimed that there was an overpayment of taxes for the taxable years at issue and requested a refund.

**Role:** As co-counsel with James Fuller (Williams & Connolly) and Hartz outside counsel S.L. Warhaftig (Proskauer, Rose, Goetz & Mendelsohn, 1585 Broadway, New York, New York 10036, (212) 969-3845), I directed discovery, prepared briefs and other papers, argued motions in the Tax Court on behalf of Hartz and Stern and conducted negotiations with government counsel.

**Disposition:** Described in number 8 below.

(Counsel for Defendant Commissioner of Internal Revenue: William S. Garofalo, Esq., Office of the District Counsel, Internal Revenue Service, 970 Broad Street, Room 904, Newark, New Jersey 07102, (201) 645-3047).

8. Hartz Mountain Industries, Inc., et al. v. United States, Case No. 226-86 T and Stern v. United States, Case No. 225-86T (before the United States Claims Court; Judge Wiese)

Date(s) of Representation: 1985-1987; 1989-1992

Nature of Representation: Tax litigation before the United States Claims Court. This case was a companion case to the United States Tax Court action described in number 7 above, but involved different taxable years. In addition to Hartz, Williams & Connolly represented Hartz executive Leonard Stern and his former wife Judith Peck.

Summary: This matter involved tax carrybacks relating to the deduction for settlement payments described in number 7 above, along with the tax treatment of a series of transactions with respect to certain buildings and real property in New Jersey. The Internal Revenue Service assessed an underpayment of taxes and interest in excess of \$12 million. Hartz paid this amount and brought this action in the Claim Court for a refund.

The parties agreed that the disposition of these real estate issues by the Claims Court would control the tax treatment of the same items for the taxable years involved in the Tax Court case described in number 7 above, and that the Tax Court would resolve the settlement payments issue.

Role: As co-counsel with James Fuller (Williams & Connolly) and S.L. Warhaftig (Proskauer, Rose, Goetz & Mendelsohn, 1585 Broadway, New York, New York 10036, (212) 969-3845), I directed discovery, prepared briefs and other papers and conducted negotiations with government counsel.

Disposition: This matter was settled in conjunction with the Tax Court action described in number 7 above. Following extensive discovery, the parties negotiated a comprehensive settlement for both cases. The government abandoned its claims of underpayment of taxes and instead agreed to pay a total tax refund to Hartz in the amount of approximately \$18 million and to Stern and Peck in the amount of approximately \$1 million.

(Counsel for Defendant United States: William K. Drew, Esq., Justice Department (Tax), Claims Court Section, P.O. Box 26, Ben Franklin Post Office, Washington, D.C. 20044, (202) 307-3046).



9. Jay Sharp, Warren Simmons, Joe Bugel, Jerry Rhome, Don Breauux, Wayne Sevier, Charley Taylor, Larry Peccatiello, Richie Petitbon, Bobby Beathard, Lavern Torgeson, and Bill Hickman v. Van Hauen, Case No. 85-1356-A (before the United States District Court for the Eastern District of Virginia; Judge Cacharis; 1985-1986) Sharp, et al. v. Van Hauen, No. 86-1586-A (before the United States Court of Appeals for the Fourth Circuit; 1986)

Date(s) of Representation: 1985-1986

Nature of Representation: Negotiation and litigation of commercial dispute in federal courts. Williams & Connolly represented the plaintiffs.

Summary: This case arose out of a disastrous business investment made by the members of the Washington Redskins' coaching staff. Following the Redskins' victory in Super Bowl XVII, each of the coaches was fraudulently induced to invest their entire winning share in a real estate partnership. Further, on behalf of the real estate partnership, each coach executed a series of personal guarantees in favor of third-party creditors who were not part of the fraud. Since the real estate promoter was essentially judgment-proof, the critical element of the representation was to structure and negotiate a work-out plan with the third-party creditors. The representation also included filing suit on behalf of the coaches against the promoter alleging federal securities law fraud, breach of fiduciary duty, and other claims.

Role: As lead counsel on the case with litigation counsel Michael Sundermeyer (Williams & Connolly), I prepared briefs and other papers in the litigation, obtained a default judgment against the promoter, and handled all business negotiations with third-party creditors.

Disposition: A work-out plan was successfully implemented with the creditors. In the litigation, the district court entered a default judgment in favor of the coaches as a sanction for defendant's discovery abuse, which was upheld on appeal to the Fourth Circuit. A small fraction of the final judgment was subsequently collected from the defendant.

(Counsel for Defendant: None; Steve Van Hauen, Jr., the defendant, acted pro se).

10. Joseph A. Mendes, Jr. v. New England Patriots (arbitration before Jay Moyer, Esq., Executive Vice President and General Counsel of the National Football League, sitting by designation on behalf of Commissioner Paul Tagliabue)

Date(s) of Representation: 1992-1994.

Nature of Representation: Arbitration proceeding before the Commissioner of the National Football League. Williams & Connolly represented Joseph Mendes, a former senior executive of the New England Patriots.

Summary: This case arose out of the Patriots' termination of Mr. Mendes in 1992 allegedly "for cause" under the terms of his employment agreement. As required by that agreement, Mr. Mendes certified the dispute for binding arbitration before the Commissioner. Mr. Mendes sought approximately \$1 million in compensatory and punitive damages.

Role: As lead counsel with co-counsel Joseph Petrosinelli (Williams & Connolly), I had final responsibility for all aspects of the case, including discovery, motions practice, presentation of arguments and examination of certain witnesses at the arbitration hearing and filing of post-hearing briefs.

Disposition: The arbitrator entered a decision that the Patriots terminated Mr. Mendes' employment "without cause," and therefore the Patriots were liable for damages under Mr. Mendes' employment agreement. The amount of damages is presently under consideration by the arbitrator.

(Counsel for Defendant: James J. Murphy, Esq., Bryan Cave, 700 Thirteenth Street, N.W., Washington, D.C. 20005, (202) 508-6015; Daniel L. Goldberg, Esq., Bingham, Dana & Gould, 150 Federal Street, Boston, MA 02110-1726, (617) 951-8000).

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

1. General Counsel and Staff Director, Senate Select Committee on Intelligence, 1987-1989/Iran Contra Committee, 1987.

In 1987-1989, I was the General Counsel and Staff Director of the Senate Select Committee on Intelligence under Chairman David Boren. In this capacity, I received government security clearances.

On the Intelligence Committee, I was responsible for a staff of 40, reporting to the Chairman and Vice Chairman. I was actively involved in all matters before the Committee. During my tenure, the Committee was considered a success in many areas. First, the professional and bipartisan administration of the Committee helped to restore confidence in the Congressional oversight process. As a result, a constructive relationship developed between the legislative and executive branches which greatly improved the effectiveness of the Committee's work.

Second, new procedures for reporting covert operations were developed between the White House and the Congress, and in 1987 the United States Senate passed legislation codifying these new procedures.

Third, the Committee evaluated the top secret elements of the Intermediate-range Nuclear Forces ("INF") Treaty and reported back its findings to the full Senate, both in public and in closed session. The Treaty was subsequently ratified by the Senate.

Fourth, the Committee prepared and published a report on embassy security throughout the world.

Finally, in connection with its oversight responsibilities with respect to both the CIA and the FBI, the Committee conducted a number of successful investigations.

During 1987, I also served as a member of the staff of the Iran-Contra Committee. My responsibilities included developing evidence, reviewing documents and preparing for Committee hearings.

2. Restructuring Business Relationships.

Over the years, Williams & Connolly has gained a reputation as one of the country's leading litigation firms. Clients come to Williams & Connolly generally anticipating they will become involved in litigation. A significant part of my current practice is to represent parties in business disputes who are prepared to pursue a lawsuit, if necessary,

but would prefer to avoid the inefficiency and cost of litigation. Two examples in particular are representative of this work.

In 1991, Williams & Connolly represented an individual businessman who, together with his partner, developed a large commercial area around Washington-Baltimore. After 30 years together, the partners desired to go in different directions, and their disagreements became acrimonious. The control and ownership of three corporations and more than 30 partnerships was at stake. I was lead counsel on the case. This matter required more than six months to develop the facts and to craft legal alternatives, including the creation of a series of new business entities. As a result, litigation was avoided. Each of the partners currently is doing business successfully in separate enterprises.

In 1992-1993, Williams & Connolly represented the founding principal in a major national personal services firm. Again, the principals were in a bitter dispute and contemplated litigation. On behalf of the founding principal, my responsibility was to structure and negotiate a new business relationship between the parties. The principals are currently operating successfully under this new relationship.

### 3. Business Transactions.

Part of my practice continues to be structuring business transactions. Such transactions include the purchase and sale of business entities, internal restructurings of corporations and partnerships, and large scale financings.

The most unique and complicated of these matters are financings. Williams & Connolly represents a business routinely engaged in asset-backed financings, which collateralize loan portfolios with values which can exceed \$100 million. I have acted as both lead counsel and co-counsel on such financings.

Recently, our firm developed a new form of business entity which can be used to finance vehicle leases without spending millions of dollars on the cost of re-titling vehicles using trust interests as collateral for the financing, rather than using the actual vehicles and leases owned by the trust. This matter involved a number of state and federal legal questions and a series of business issues, and ultimately required a favorable rating by national rating agencies.

#### 4. Baltimore Orioles.

In 1989, I joined the Baltimore Orioles, first as Club Counsel and later as a Vice President. I was a central figure in the development of the organization's management and budget procedures, which are considered to be among the most efficient and effective in baseball. I was also chairman of "Project '95", the organization's long-term planning committee.

In addition to my legal and business representation, in 1993, I was an active participant with Orioles' President Larry Lucchino in a conference among all baseball owners regarding "revenue sharing," i.e. the sharing of revenues by large market clubs such as the Orioles with small market clubs.



## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have two deferred income arrangements, a profit sharing plan and a 401(k) plan, each with Williams & Connolly. Upon my leaving Williams & Connolly those plans either will be terminated or will be maintained so as to ensure that at no time will there be a conflict of interest or the appearance of a conflict of interest in any matter. My partnership capital interest in Williams & Connolly will be returned to me upon my resignation from the firm, which will occur prior to my commencing service on the bench.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Our financial holdings, other than our residence, are limited to investment securities. All necessary steps will be taken to ensure that at no time will there be a conflict of interest or the appearance of a conflict of interest in any matter.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

My actual income for 1993 and estimated income for 1994 may be summarized as follows:

Actual 1993 Income<sup>1/</sup>

Williams & Connolly Partnership Income	\$ 272,509
Interest Income <sup>2/</sup>	\$ 2,956
Dividend Income <sup>3/</sup>	\$ 831
Capital Gain (from sale of commercial property owned by Williams & Connolly partners)	\$ <u>25,175</u>
TOTAL 1993 INCOME	\$ 301,471

Estimated 1994 Income

Williams & Connolly Partnership Income	\$ 280,000
Interest Income	\$ 4,000
Dividend Income	\$ <u>2,000</u>
TOTAL ESTIMATED 1994 INCOME	\$ 286,000

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for).

Attached behind this page.

---

<sup>1/</sup> My wife's income in 1993 was \$73,209 (as adjusted for the child care credit) and will be approximately \$85,000 in 1994.

<sup>2/</sup> Commonwealth One Federal Credit Union (The Washington Post); Riggs National Bank; Williams & Connolly K-1.

<sup>3/</sup> Investment Co. of America; Fundamental Investors; Dean Witter American Value; Fidelity Growth Income; Fidelity Magellan.

# FINANCIAL STATEMENT NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	20	000 00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Other securities—add schedule	53	000 00	Notes payable to relatives		
Deferred securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	30	500 00
Real estate owned—add schedule	550	000 00	Other mortgages and other loans payable		
Real estate mortgages receivable			Other debts—itemize:		
Automobile and other personal property	50	000 00			
Cash value—life insurance					
Other assets—itemize:	197	500 00			
Total assets	870	500 00	Total liabilities	30	500 00
			Net worth	55	500 00
			Total liabilities and net worth	870	500 00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	NO		Are any assets pledged? (Add schedule, if any.)	NO	
On leases or contracts	NO		Are you defendant in any suits or legal actions?	NO	
Legal claims	NO		Have you ever been bankrupt?	NO	
Provision for Federal Income Tax	NO				
Other special debt	NO				

Complete Assets Schedule Attached

Complete Liabilities Schedule Attached

ASSETS  
(Estimated Values)

Cash on Hand:

Banks	\$ 5,000
Credit Union (The Washington Post)	\$ 15,000

Listed Securities:

Fidelity Magellan	\$ 20,000
Fidelity Growth Income	\$ 15,000
Fundamental Investors	\$ 9,000
Dean Witter American Value	\$ 9,000

Real Estate:

Home (3337 Rittenhouse St., N.W., Washington, D.C.)	\$ 550,000
--	------------

Other Assets:

Household furnishings and other personal property	\$ 50,000
Partnership Capital Account	\$ 23,000

Retirement:

Individual Retirement Account	\$ 7,500
401(k) Plan, Williams & Connolly	\$ 21,000
ERISA Profit Sharing Plan, Williams & Connolly	\$ 50,500
401(k) Plan, The Washington Post	\$ 92,000
Individual Retirement Account (wife)	\$ <u>3,500</u>

TOTAL ASSETS	\$ 870,500
--------------	------------

Assets Schedule

LIABILITIES

Nationsbank (real estate mortgage - residence) \$ 298,500

Riggs National Bank (home equity line of credit) \$ 2,500

TOTAL LIABILITIES \$ 301,000

ESTIMATED NET WORTH \$ 569,500

Liabilities Schedule



6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have held positions in two political campaigns. In 1973-1974, I was involved in the gubernatorial campaign of David Boren. My title was "Campaign Coordinator." In that capacity I served as a communications link between the candidate and the volunteer organization throughout the state. In addition, I traveled frequently with the candidate and participated with the candidate and others in virtually every major campaign decision.

In 1978, during the summer between my first and second year in law school, I was involved in the senatorial campaign of David Boren. My title was "Tulsa Regional Coordinator." In that capacity I worked with campaign volunteers in Tulsa and the surrounding area and served as the communications link between those volunteers and campaign headquarters.

In addition, in 1983-1984, I was Executive Director of Democrats for the 80's, an independent political action committee in Washington, D.C. founded and chaired by Pamela Harriman. In that capacity I did not hold a position in any political campaign. The purpose of Democrats for the 80's was to raise and contribute money on behalf of democratic candidates, to publish a "Democratic Fact Book" analyzing issues of general interest to candidates and to sponsor polls and other political services to advance the cause of Democrats generally.

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Over the years, I have actively promoted diversity and outreach in the workplace, the schools, and other institutions with which I have been associated.

Specifically, at Williams & Connolly, I advocated the creation of a Diversity Committee, of which I am now an active member. This committee is responsible for increasing the diversity of the firm and ensuring equal opportunity for minorities and women in both hiring and advancement.

I was similarly involved in the development of an outreach program at the Baltimore Orioles. This was the first issue addressed by the Orioles' long-term planning committee, "Project '95," of which I was Chairman. These efforts accompanied a major commitment by the Orioles to the minority community. The Orioles are considered leaders among major league baseball clubs in minority community involvement and service.

Finally, I am involved in a comparable effort at my daughter's school, where I am Chair of the school Steering Committee. The Steering Committee created a Diversity Committee, of which I am an active member. The goals of the Diversity Committee are to increase minority participation in the school, and to create an environment where parents, teachers and children have respect for individual differences. This effort includes the active recruitment of disadvantaged and minority scholarship students.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I am not a member of any organization which discriminates on the basis of race, sex or religion, nor would I join any

such organization. The only business club of which I have been a member was the Tulsa Club briefly in 1982-83. The Tulsa Club is now defunct. The only social club of which I have been a member was the Fly Club, a club at Harvard for undergraduates. As a graduate, I have actively advocated that the undergraduates vote to admit women as members.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts?

Yes. The Federal Judicial Advisory Committee.

If so, did it recommend your nomination?

The Federal Judicial Advisory Committee submitted my name on a list to Senator David L. Boren.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

The Federal Judicial Advisory Committee (the "Committee"), comprised of 13 prominent Oklahomans, is charged with reviewing applications, conducting interviews and submitting a short list of names to Senator David L. Boren. Senator Boren selects an individual from that list for recommendation to President Clinton.

In April-May of 1994, the Committee advertised that it was accepting applications for two U.S. District Court vacancies in Oklahoma: the Western District and the Northern District.

The full Committee reviewed the applications and conducted interviews of selected applicants, including myself, on June 23-24. Following the interviews, the Committee submitted a list of recommended individuals to Senator Boren. From this list, by letter dated June 30, 1994, Senator Boren recommended me to President Clinton for nomination to the U.S. District Court for the Northern District of Oklahoma.

Following this recommendation, I have been interviewed by individuals in the Department of Justice, an FBI agent and a representative of the American Bar Association, each as part of an independent investigation of my experience and qualifications.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be

interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Based on my experience in all three branches of the government -- as Administrative Assistant to then-Governor of Oklahoma David L. Boren, as law clerk to U.S. District Judge Thomas R. Brett and as General Counsel and Staff Director of the Senate Select Committee on Intelligence -- I have great respect and appreciation for our system of checks and balances. In my judgment, however, the system is effective only if each branch of government performs its designated responsibilities and does not usurp the powers entrusted to other branches.

The role of the judiciary in our system of government is to interpret the laws, not to make the laws. The responsibility for legislating resides with elected officials, who are accountable to the public. In my view,

the judiciary should become involved in the legislative process only in those rare instances where elected officials have exceeded their powers by enacting laws inconsistent with constitutionally protected rights. For a court to go beyond this limited role is an abuse of authority and disrupts the system of checks and balances set forth in the Constitution.

It is from this perspective that I address the issue of "judicial activism." Clearly, my view is that the guiding principle for the judicial branch should be that of restraint. To act otherwise is to interfere with the balance of power among the three branches of government.

In my opinion, the generalization that the judicial branch has "usurped" many of the responsibilities of other branches and levels of government sweeps far too broadly. There is, however, legitimate concern that certain courts have not shown proper deference to the constitutional limits on the judiciary and have exceeded those limits in specific proceedings before them.

My response to this concern is to develop a set of principles which, in my judgment, should guide the actions of any judge, including myself, in addressing a matter before his or her court. Specifically, such principles should include the following:

- The role of the judiciary is to interpret the laws and not to make the laws.
- Any dispute before the court requires a resolution between the parties and the court should not search for vehicles to serve other unrelated social or political objectives.
- The legal duties of our government and members of our society should be determined, in the first instance, by elected officials who are directly accountable to the people. Only in cases where elected officials have acted contrary to established constitutional principles should a court intervene so as to invalidate or otherwise modify their decisions.
- Principles of jurisdiction such as standing and ripeness should be consistently applied in all cases. To act otherwise destroys uniformity in the law and thereby undermines confidence in the judicial system as a whole. This nation was and is built upon respect for the rule of law -- and the rule of law requires even-handed application of all legal principles, including



those pertaining to the jurisdiction of the federal courts.

- The federal judiciary should not supplant the role of the executive branch by assuming ongoing administrative responsibilities. To the extent possible, courts should attempt to resolve specific disputes between specific parties and thereafter relinquish jurisdiction of the matter. Federal judges should maintain continuing oversight responsibility only in those unique cases where to do otherwise would result in a denial of constitutional rights.

These principles are fundamental to the continuing vitality and legitimacy of the federal courts. To the extent that any court does not follow these principles, and such a course of conduct is labelled "judicial activism," then that court properly will be subject to criticism.

## QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)1. **Full name (include any former names used.)**

Vicki Miles-LaGrange  
Vicki Lynn Miles

2. **Address: List current place of residence and office addresses).**

Residence:  
6600 N.E. 63rd Street  
Oklahoma City, OK 73141

Office:  
United States Attorney  
210 W. Park Avenue Suite 400  
Oklahoma City, Oklahoma 73120

3. **Date and place of birth.**

September 30, 1953  
Oklahoma City, Oklahoma

4. **Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**

Jacques Rene LaGrange  
Radiology Instructor  
Palm Beaches Medical Center  
2201 45th Street  
West Palm Beach, Florida 33407

5. **Education: List each college and law school you have attended, including date of attendance, degrees received, and date degrees were granted.**

Vassar College  
Poughkeepsie, New York  
1971 - 1974  
Bachelor of Arts, 1974

University of Ghana  
Legon, Ghana, West Africa  
Summer-1973  
Certificate, 1973

Howard University School of Law  
Washington, D.C.  
1974 - 1977  
Juris Doctorate, 1977

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

09/74 - 06/76    Legislative Intern  
                    Speaker Carl Albert  
                    U.S. House of Representatives  
                    Washington, D.C.

06/76 - 09/76    Summer Law Clerk  
                    U.S. District Judge Luther Bohanon  
                    Oklahoma City, Oklahoma

09/76 - 11/76    Law Clerk  
                    U.S. Commission on Civil Rights  
                    Washington, D.C.

11/76 - 04/77    Law Clerk  
                    Arnold & Porter  
                    Washington, D.C.

08/77 - 08/79    Law Clerk  
                    U.S. District Judge Woodrow Seals  
                    Houston, Texas

10/79 - 11/80    Graduate Fellow  
                    U.S. Department of Justice  
                    Office of Special Investigations  
                    Washington, D.C.

## Vicki Miles-LaGrange

- 05/81 - 08/81    Lecturer  
University of Maryland  
Women's Studies Program  
College Park, Maryland
- 12/80 - 12/81    Special Assistant  
African Development Group  
Washington, D.C.
- 11/82 - 07/83    Attorney  
U.S. Dept of Justice  
Office of Enforcement Operations  
Washington, D.C.
- 08/83 - 06/86    Assistant District Attorney  
Oklahoma County District Attorney  
Oklahoma City, Oklahoma
- 01/87 - 09/93    Senator  
Oklahoma State Senate  
Oklahoma City, Oklahoma
- 12/86 - 07/89    Partner  
Miles-LaGrange & Colbert  
Oklahoma City, Oklahoma
- 08/89 - 09/91    Sole Proprietor  
Miles-LaGrange & Associates  
Oklahoma City, Oklahoma
- 10/91 - 10/92    Principal  
Miles-LaGrange & Robinson  
Oklahoma City, Oklahoma
- 11/92 - 09/93    Sole Proprietor  
Miles-LaGrange & Associates  
Oklahoma City, Oklahoma
- 09/93 - Present    United States Attorney  
Western District of Oklahoma  
Oklahoma City, Oklahoma

Vicki Miles-LaGrange

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Florence Ogden Wilson Scholarship, 1971 - 1974

Adolph Sturo Vassar Graduate Fellowship, 1974 - 1975

Earl Warren Legal Training Fellowship, 1974 - 1977

Case Development Editor, Howard University Law Journal, 1976 - 1977

Honorary Distinguished Alumnus Award, Langston University, 1988

Distinguished Alumni Award - Howard University (National Association for Equal Educational Opportunity), 1992

9. Bar Association: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Attorney General's Advisory Committee, 1993 - Present  
o Attorney General Janet Reno

Oklahoma Bar Association, 1982 - Present  
o Member, Evidence Code Committee

American Inns of Court CV, Barrister, 1990 - Present

Association of Black Lawyers, 1982 - Present  
o Member, Scholarship Committee



Vicki Miles-LaGrange

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Organizations To Which I Belong Which Lobby Before Public Bodies

None

All Other Organizations To Which I Belong

Trustee:

- o Moran Children's Museum, Seminole, Oklahoma
- o Oklahoma City University, Oklahoma City, Oklahoma
- o University of Ozarks, Clarksville, Arkansas

Board of Directors:

- o Kirkpatrick Museum and Planetarium
- o Last Frontier Council, Boy Scouts of America
- o Oklahoma Foundation for Excellence

Member:

- o Alpha Kappa Alpha Sorority, Inc.
- o Eastside Culture Club
- o Junior League of Oklahoma City (Sustaining Member)
- o Leadership OKC, Class V, Alumni
- o Leadership Oklahoma, Class V, Alumni
- o Links, Inc.
- o Queen Bathsheba Grand Chapter OES  
Oklahoma Jurisdiction P.H.A.

Life Member:

- o NAACP (Subscribing)
- o Urban League

Vicki Miles-LaGrange

11. Court Admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses, if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

United States Court of Appeals for the Tenth Circuit, May 3, 1983

United States District Court for the Western District of Oklahoma, June 5, 1986

United States District Court for the Northern District of Oklahoma,  
November 20, 1987

United States Court of Appeals for the District of Columbia, March 1, 1983

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

"Constitutional Law - State Statute Prohibiting Use of Marijuana In the Home Violative of the Right of Privacy, Ravin v. State of Alaska, 2 The Howard Law Journal 190 (1976), (Case comment written in law school. See Attachment A)

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent  
June 15, 1994

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

## Vicki Miles-LaGrange

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not Applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

United States Attorney  
Western District of Oklahoma  
Oklahoma City, Oklahoma  
1993 - Present  
Appointed

Oklahoma State Senator  
Oklahoma State Senate  
Oklahoma City, Oklahoma  
1986 - Elected  
1990 - Re-elected

Assistant District Attorney  
Oklahoma County District Attorney  
Oklahoma City, Oklahoma  
1983 - 1986  
Appointed

Graduate Fellow and Trial Attorney  
United States Department of Justice  
Criminal Division  
Washington, D.C.  
1979 - 1980  
1982 - 1983  
Appointed

## Vicki Miles-LaGrange

## Legislative Intern

Speaker of the United States House of Representatives, Carl Albert  
Washington, D.C.

1974 - 1976

Appointed

17. Legal Career:

## a. Describe chronologically your law practice and experience after graduation from law school including:

## 1. Whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

06/76 - 09/76      U.S. District Judge Luther Bohanon  
Oklahoma City, Oklahoma

08/77 - 08/79      U.S. District Judge  
Woodrow Seals  
Houston, Texas

## 2. Whether you practiced alone, and if so, the addresses and dates;

08/89 - 09/91      Miles-LaGrange & Associates  
525 Central Park Drive, Suite 212  
Oklahoma City, Oklahoma 73105

11/92 - 09/93      Miles-LaGrange & Associates  
515 Central Park Drive, Suite 400  
Oklahoma City, Oklahoma 73105

## 3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

08/77 - 08/79      Law Clerk  
U.S. District Judge Woodrow Seals  
U.S. Courthouse  
515 Rusk  
Houston, Texas 77002

## Vicki Miles-LaGrange

- 10/79 - 11/80 Graduate Fellow  
U.S. Department of Justice  
14th & K Street, N.W.  
Office of Special Investigations  
Washington, D.C. 20530
- 05/81 - 08/81 Lecturer  
University of Maryland  
Women's Studies Program  
College Park, Maryland 20742
- 12/80 - 12/81 Special Assistant  
African Development Group  
3020 N Street, N.W.  
Washington, D.C.
- 11/82 - 07/83 Attorney  
U.S. Department of Justice  
Office of Enforcement Operations  
Pennsylvania Avenue at 10th Street  
Washington, D.C. 20530
- 08/83 - 06/86 Assistant District Attorney  
Oklahoma County District Attorney  
320 Robert S. Kerr  
Oklahoma City, Oklahoma 73102
- 12/86 - 07/89 Partner  
Miles-LaGrange & Colbert  
4020 Lincoln Boulevard, Suite 204  
Oklahoma City, Oklahoma 73105
- 08/89 - 09/91 Sole Proprietor  
Miles-LaGrange & Associates  
525 Central Park Drive, Suite 212  
Oklahoma City, Oklahoma 73105
- 10/91 - 10/92 Principal  
Miles-LaGrange & Robinson, P.C.  
515 Central Park Drive, Suite 400  
Oklahoma City, Oklahoma 73105



## Vicki Miles-LaGrange

11/92 - 09/93	Sole Proprietor Miles-LaGrange & Associates, P.C. 515 Central Park Drive, Suite 400 Oklahoma City, Oklahoma 73105
09/93 - Present	United States Attorney 210 W. Park Avenue Suite 400 Oklahoma City, Oklahoma 73102

- b. 1. What has the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

(1977 - 1982) Served as Junior and Senior Law Clerk for United States District Judge Woodrow Seals. In this capacity, I conducted extensive legal research and drafted memoranda concerning substantive legal questions. Combined a review of relevant statutes and legal opinions with the facts of individual cases to assist the Judge in rendering decisions; reviewed case files and briefed the Judge on the status of cases on his 700-case civil docket; acted as a sounding board for the Judge in discussing cases; maintained confidentiality of the Judge's decisions.

As a Graduate Fellow and Attorney at the United States Department of Justice, Criminal Division, I rotated through several sections. In the Office of Legislation, I engaged in comparative analysis of drafts of the proposed Federal Criminal Code and interfaced extensively with congressional personnel. In the Office of Special Investigations my responsibilities included reviewing case files in highly complex litigation for the purpose of recommending courses of action in cases to be prosecuted; consulted with staff historians, wrote extensive legal memoranda and was granted a top secret security clearance for the purpose of reviewing related classified documents of Nazi war criminals. In the Office of Enforcement Operations, I prepared and reviewed applications for electronic surveillance.

(1983 - 1986) As an Assistant District Attorney, I prosecuted cases in both the misdemeanor and felony divisions. I served as Chief of the DUI Division during which time I administered a grant from the Oklahoma Highway Safety Office to prosecute DUI cases. During this period, I supervised several attorneys and prosecuted DUI cases. I subsequently joined the Sex Crimes Division during which time I prosecuted rape, sodomy, indecent exposure and other sex crime cases. I also served as co-counsel on several First Degree Murder cases. I have prosecuted many jury and non-jury trials. During this tenure, I handled several hundred misdemeanor and felony cases.

## Vicki Miles-LaGrange

(1986 - 1993) As a private practitioner, my law practice was general and varied. The primary area of practice, however, has been real estate foreclosures and selected personal injury and probate. My practice required numerous court appearances, especially motion practice. I have practiced primarily in state court, but also appeared in federal court less frequently.

(1993 - Present) As United States Attorney, I am responsible for managing a budget of \$4.2 million and the prosecution of a diverse variety of criminal and civil cases, managing a staff of 34 attorneys and 44 support staff, establishing policies impacting the office and implementing policies of the Department of Justice.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

During my private practice, my typical clients were average citizens, including both lay and business people. I also served as outside counsel for the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC).

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

From 1977-1979, as a law clerk for Judge Seals, I appeared in court on a daily basis, taking copious notes, for the purpose of drafting legal memoranda. During my employment at the U.S. Department of Justice, from 1979-1983, I very rarely appeared in court.

From 1983-1986, as an Assistant District Attorney, I appeared in court on a daily basis for the purpose of trials (jury or non-jury), preliminary hearings or motions.

In the private practice of law, from 1986-1983, my court appearances were occasional and primarily for motions. I have served as co-counsel on several civil cases at jury trial.

In the United States Attorney's Office, to date, my court appearances have been occasional primarily for proceedings such as detention hearings, sentencings, and motion hearings.

Vicki Miles-LaGrange

2. What percentage of these appearances was in:
  - (a) federal courts: 5%
  - (b) state courts of record: 95%
  - (c) other courts: 0%
3. What percentage of your litigation was:
  - (a) civil; 95% (1986-1993)
  - (b) criminal. 100% (1983-1986)
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.
 

As Sole Counsel: Approximately 40

As Associate Counsel: Approximately 25
5. What percentage of these trials was:
  - (a) Jury: 90%
  - (b) Non-jury: 10%
18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:
  - (a) the date of representation;
  - (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
  - (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

## Vicki Miles-LaGrange

(1) State of Oklahoma v. Larry Eugene Mukes, CRF-85-4132Substance of Case:

This was a double homicide case in which the victim, Viola Hillard, and her thirteen-year old son, Bobby Murry, died of multiple stab wounds inflicted by the Defendant, the live-in boyfriend of Ms. Hillard. The Defendant surrendered to the Oklahoma City Police. He admitted stabbing the victims, but asserted that he was acting in self-defense. Defendant claimed that he had been under the influence of drugs earlier that day and later witnessed a strange man leaving the premises. Upon entering the house, Defendant asserted that Ms. Hillard attacked him with a knife and was assisted by her son. Defendant called for medical assistance and threw the knives outside.

The case involved multiple pieces of physical evidence, many witnesses and extensive research on self-defense.

Parties Represented:

The State of Oklahoma

Nature of Participation:

I was Co-Counsel with the First Assistant District Attorney, Patrick Morgan. I engaged in trial preparation, including research on self-defense, selection of the jury, examination and cross-examination of witnesses, presentation of evidence and the second closing argument.

Disposition of Case:

The jury returned a verdict of Ninety-Nine years on Count I, Manslaughter, and Life on Count II, to be served consecutively. The verdict was upheld on direct appeal but was reversed on Habeas Corpus based on an erroneous jury instruction regarding the burden of proof in a claim of self-defense.

On remand for new trial the Defendant pled guilty to Murder in the First degree and Manslaughter in the First Degree of which he had been found guilty by the jury at trial in 1986. His plea was pursuant to an agreement that the sentences be served concurrently instead of consecutively.

Vicki Miles-LaGrange

(a) Dates of Representation:

August 1985 - February 1986

(b) Court & Judge(s) Before Whom Case Was Litigated:

District Court, State of Oklahoma, Oklahoma County  
o The Honorable Joe Cannon, District Judge

Oklahoma Court of Criminal Appeals

- o The Honorable Tom Brett, Wrote Opinion
- o The Honorable James Lane, Specially Concurred
- o The Honorable Gary Lumpkin and Charles Johnson, Concurred
- o The Honorable Ed Parks, Dissents

United States District Court, Western District  
of Oklahoma

- o The Honorable Lee West, U.S. District Judge

(c) Co-Counsel for State:

Patrick Morgan, First Assistant District Attorney  
320 Robert S. Kerr  
Oklahoma City, Oklahoma 73102  
(405) 278-1600

Co-Counsel for Defendant:

Ron Evans (Then Assistant Public Defender)  
100 North Broadway  
Oklahoma City, Oklahoma 73102  
(405) 235-4848

Cindy Foley (Then Assistant Public Defender)  
817 N.W. 37th Street  
Oklahoma City, Oklahoma 73118  
(405) 525-8308



## Vicki Miles-LaGrange

(2) State of Oklahoma v. Centedor Michael Jackson, CRF-85-4152Substance of Case:

This murder case involved a 16-year old victim, Marcell Nutt and Mark Orange, the victim of Shooting With Intent to Kill. The Defendant believed Nutt, who was visiting on vacation, had dated his former girl friend. Orange was a cousin of the girl. The victims gave the Defendant a ride. The Defendant then directed Orange through some residential streets and became upset when Orange refused to turn down a deserted dirt road.

Defendant shot Nutt through the head, killing him. Orange tried to escape, and as he jumped from the moving car, Defendant shot him through the shoulder. The bullet lodged in Orange's neck, but he survived.

Defendant walked from the crime scene to his former girl friend's house and asked the girl's father for a ride. The man refused and Defendant walked to another house and took a truck. The record shows he had stolen the keys to that truck some time earlier. The police spotted Defendant in the truck. After a high speed chase, he was apprehended. At trial, the Defendant relied upon a defense of insanity.

The case involved multiple pieces of physical evidence and many witnesses.

Parties Represented:

The State of Oklahoma

Nature of Participation:

I was Co-Counsel with the First Assistant District Attorney, Patrick Morgan. I engaged in independent investigation and other trial preparation, research concerning the insanity defense, selection of the jury, examination and cross-examination of witnesses, presentation of evidence, and closing argument.

Disposition of Case:

The jury returned a verdict of Life on Count I, Murder in the First Degree and of Life on Count II, Shooting With Intent to Kill to be served consecutively. The verdict was affirmed on appeal.

Vicki Miles-LaGrange

(a) Dates of Representation:

September 1984 - June 1985

(b) Court & Judge(s) Before Whom Case Was Litigated:

District Court, State of Oklahoma, Oklahoma County  
o The Honorable Karl Gray, District Judge

Oklahoma Court of Criminal Appeals  
o The Honorable Hez Bussey, Wrote Opinion  
o The Honorable Tom Brett and Ed Parks, Concurred

(c) Co-Counsel for State:

Patrick Morgan, First Assistant District Attorney  
320 Robert S. Kerr  
Oklahoma City, Oklahoma 73102  
(405) 278-1600

Counsel for Defendant:

Robert Ravitz, Oklahoma County Public Defender  
320 Robert S. Kerr  
Oklahoma City, Oklahoma 73102  
(405) 278-1550

(3) State of Oklahoma v. William Brent Carlton, CRM-84-4334

Substance of Case:

This was a Driving Under the Influence With Personal Injury case. The victim, Candace Ping, was a 40-year old school teacher became paralyzed as a result of the collision. The 19-year old Defendant was a college student with no prior offenses.

The car in which Candace Ping was driving became disabled and required a jump-start. She was standing between her car and the car of the "good samaritan" who was attempting to assist her.

The Defendant, driving with a Blood Alcohol Content (BAC) of .29%, rear-ended the Ping car and pinned her between both cars.

The case was a misdemeanor tried to a six-person jury.

Vicki Miles-LaGrange

Parties Represented:

The State of Oklahoma

Nature of Participation:

I was counsel and conducted all of the trial preparation and research, selection of the jury, examination and cross-examination of witnesses, presentation of evidence and closing argument.

Disposition of Case:

The jury returned a verdict the maximum penalty under the law, 120 days in the county jail and a \$100,000 fine. As a result of this case, the Oklahoma Legislature amended existing law to provide for a felony offense when serious personal injury results from a person driving under the influence, despite whether it is a first offense.

(a) Date of Representation:

September 1984 - February 1985

(b) Court & Judge(s) Before Whom Case Was Litigated:

District Court, State of Oklahoma, Oklahoma County  
o The Honorable Bryan Dixon (Then Special Judge)

(c) Counsel for State:

Vicki Miles-LaGrange

Counsel for Defendant:

Charles Grethen  
P. O. Drawer D  
Purcell, Oklahoma 73080  
(405) 527-5571

Vicki Miles-LaGrange

- (4) Michael Barnett, Personal Representative of the Estate of Regina Anginetta Barnett, Deceased, and the Estate of Baby Andrew Jordeamon Barnett, Individually, and as Natural Parents and Grandparents v. Gerald C. Zumwalt, M.D., Robert G. White, M.D., Sapulpa Doctors, Inc., and Oklahoma Corporation, Bartlett Medical Center, Inc., an Oklahoma Corporation, and Charles J. Gebetsberger, M.D., Case No. 87-C-277-B

Substance of Case:

This was an obstetric medical malpractice case in which a pregnant mother, Regina Barnett and her unborn baby, Andrew Jordameon Barnett died as a result of the medical negligence of the named Defendants.

Specifically, the Plaintiff contended that the death of and injuries of Regina and Andrew were the result of Defendant's failure to run proper tests, failure to diagnose their condition, failure to provide pre-natal and post-natal care, and failure to transfer the patient to a proper facility.

The case involved issues of negligence, res ipsa loquitur and loss of chance doctrine.

At pre-trial, the case contemplated approximately 50 pieces of physical evidence and 75 witnesses. Fifty-one depositions were taken.

Parties Represented:

Malcolm Barnett, Personal Representative of the Estate of Regina Anginetta Barnett, Deceased, and the Estate of baby Andrew Jordameon Barnett, individually and as Natural Parent and Grandparent.

Nature of Participation:

I was Co-Counsel with Tom Colbert. I engaged in pre-filing inquiry and investigation, research on specific issues of negligence, res ipsa loquitur and loss of chance doctrine. I also prepared for and took the depositions of many witnesses.

Disposition of Case:

The Defendants settled this action on the morning of trial for \$175,000 plus costs.

Vicki Miles-LaGrange

(a) Date of Representation:

March 1987 - January 1989

(b) Court & Judge(s) Before Whom Case Was Litigated:

United States District Court for the Northern  
District of Oklahoma  
o The Honorable Thomas R. Brett, U.S. District Judge

(c) Co-Counsel for Plaintiff:

Tom Colbert  
Miles-LaGrange & Colbert  
4020 Lincoln Blvd., Suite 204  
Oklahoma City, Oklahoma 73105  
(405) 424-8808

Counsel for Defendant:

Mike Atkinson  
Thomas, Glass, Atkinson, Haskins, Nellis & Bordeaux  
525 South Main  
Tulsa, Oklahoma 74103-4502  
(918) 582-8877

Attorney for Defendants Zumwalt, White and  
Gebetsberger

Mike Hill  
Secrest & Hill  
7134 South Yale  
Tulsa, Oklahoma 74136-6318  
(918) 494-5905

Attorney for Defendant Bartlett Memorial Medical  
Center



## Vicki Miles-LaGrange

- (5) Vicki McCullar v. Oklahoma Corporation Commission, an Oklahoma agency, Hamp Baker, Norma Eagleton and Bob Hopkins all individually and as Commissioners, LaVern Goetz, individually and as a Supervisor, L. Douglas Halley, individually and as a Personnel Manager, and John Q. Doe, individually and as an unknown party, CIV-87-1571-W

Substance of Case:

This was a sex discrimination case pursuant to Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e, et. seq.) for damages, injunctive and declaratory relief.

The Plaintiff alleged that the Defendants, by their action and/or omissions, discriminated against her because of her sex, harassed her because she filled a position, Fuel Inspector, that was considered a "man's job," denied her equal protection and due process under the color of state law, custom and usage, and committed a retaliatory discharge after she filed a worker's compensation claim and complaints with the Oklahoma Human Rights Commission and the United States Equal Employment Opportunity Commission.

The case involved approximately 119 pieces of documentary evidence and 43 witnesses.

Parties Represented:

Vicki McCullar, a former career employee of the Oklahoma Corporation Commission.

Nature of Participation:

I was Co-Counsel with Opio Toure. I engaged in pre-filing inquiry and investigation, examination and cross-examination of witnesses, presentation of evidence and closing argument.

Disposition of Case:

The jury returned a verdict which found Defendant Jane Antes not liable and found Defendants Jim Townsend, Doug Halley and LaVern Goetz jointly and severally liable for \$50,000.00. The parties subsequently agreed that Plaintiff's counsel be awarded attorney's fees and costs in the amount of \$55,506.00 as provided in 42 U.S.C. 2000e-5k.

## Vicki Miles-LaGrange

At the close of the Plaintiff's case, Defendants moved for a directed verdict which was renewed at the close of the Defendant's case. The Court renewed it's ruling on Defendant's motion. The Defendant's then prayed the court for Judgment Notwithstanding The Verdict.

The parties entered into a Stipulated Agreement to resolve all issues then pending before the Court, to clarify the roles of specific individuals, and to define the nature of their future relationships.

Pursuant to said Agreement, all Defendants were deemed to have not discriminated against the Plaintiff, except Defendant Goetz, who was subsequently indemnified by the Oklahoma Corporation Commission.

(a) Dates of Representation:

February 1987 - August 1988

(b) Court & Judge(s) Before Whom Case Was Litigated:

U.S. District Court, Western District of Oklahoma  
o The Honorable Lee West, U.S. District Judge

(c) Co-Counsel for Plaintiff:

Opio Toure  
1500 N.E. 4th Street  
Oklahoma City, Oklahoma 73117  
(405) 236-4904

Co-Counsel for Defendants:

Sue Wycoff  
Assistant Attorney General  
State Capitol  
Oklahoma City, Oklahoma 73105  
(405) 521-3191

Attorney for Oklahoma Corporation Commissioners

Vicki Miles-LaGrange

Thomas Tucker  
Oklahoma Corporation Commission  
2101 Lincoln Blvd.  
Oklahoma City, Oklahoma 73105  
(405) 521 2211

Attorney for LaVern Goetz, Supervisor, L. Douglas Halley, General Administrator, Jane A. Antes, Personnel Manager

- (6) Bobby Baird, Personal Representative of Judy Kay Baird, deceased and Tessa Kay Baird, deceased v. Robert Dale Flenory, deceased or his Personal Representative, General American Life Insurance Company, CJ-87-13308

and

In The Matter Of The Estate of Robert Dale Flenory, Deceased, P-87-1961

Substance of Case:

This was a wrongful death action and companion probate in which the Plaintiffs were the Personal Representative of the estate of Robert Dale Flenory, deceased, who was being sued by Bobby Baird, Personal Representative of the estates of Judy Kay Baird, and Tessa Kay Baird, deceased, for their wrongful death in CJ-87-13308. Bobby Baird alleged in the wrongful death case that Robert Dale Flenory, deceased, fell asleep at the wheel of his car and caused the deaths of the Plaintiff's and therefore was entitled to no proceeds of the estate.

There was considerable discovery in the case and extensive research of negligence, parental immunity, and the Uniform Simultaneous Death Act.

Parties Represented:

Verna Pratt and Vernetta Flenory, the Personal Representatives of the Estate of Robert Dale Flenory.

Nature of Participation:

I was Co-Counsel with Tom Colbert. I engaged in research and writing, investigation and discovery, examination and cross-examination of witnesses, presentation of evidence and of closing argument.

## Vicki Miles-LaGrange

Disposition of Case:

In the probate case, the Plaintiff's were ordered to share in the estate of the Deceased. In the wrongful death action, the Plaintiff, Bobby Baird, caused a mistrial because of his mention of insurance and the case was subsequently settled.

(a) Dates of Representation:

1987 - 1988

(b) Court & Judge(s) Before Whom Case Was Litigated:

District Court, State of Oklahoma, Oklahoma County  
 o The Honorable Arthur Rakestraw, District Judge  
 o The Honorable Jack Parr, District Judge

(c) Counsel for Plaintiff:

Roger Housley  
 Pence, Housley & Anthony  
 P. O. Box 1629  
 Norman, Oklahoma 73070  
 (405) 364-8272

Co-Counsel for Defendant:

Tom Colbert  
 Miles-LaGrange & Colbert  
 4020 N. Lincoln Blvd., Suite 204  
 Oklahoma City, Oklahoma 73105  
 (405) 424-8088

(7) Quail Springs Associates, First South, F.A., Dallas, Texas (Unreported and Undocketed)Substance of Case:

This case involved the preparation of a deed in lieu of foreclosure on Oklahoma property which was the subject of a failed Texas savings and loan institution. Quail Springs Associates, a Texas joint venture executed a promissory note payable to First South, F.A., in the principal sum of \$32,600,000.00. The Note was guaranteed by two of the four joint venturers and secured by a mortgage.

## Vicki Miles-LaGrange

The Federal Home Loan Bank Board appointed the Federal Savings and Loan Insurance Corporation (FSLIC) to be sole receiver for FirstSouth, F.A. by adoption of resolution.

Under the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, all of the assets of FSLIC were placed into the FSLIC Resolution Fund, and the Federal Deposit Insurance Corporation (FDIC) was subsequently made sole manager of the Fund which held this asset and was holder of the Note.

Quail Springs Associates sold a portion of the property to General Mills Restaurants, Inc. The FDIC issued a Partial Release of Mortgage in exchange for the net proceeds of the sale.

This case required very extensive title curative work, including clearing discrepancies in the legal description, satisfying numerous requirements in the title commitment and reconciliation of an Addendum to Mortgage.

Parties Represented:

The Federal Deposit Insurance Corporation

Nature of Participation:

I was counsel on this matter and engaged in extensive real estate title curative work.

Disposition of Case:

A General Warranty Deed and an Agreement for Deed and Estoppel and Solvency Affidavit was drafted and executed. A Title Policy was thereafter issued.

(a) Dates of Representation:

July 1991 - January 1992

(b) Court & Judge(s) Before Whom Case Was Litigated:

Not Applicable.



Vicki Miles-LaGrange

(c) Counsel for FDIC:

Vicki Miles-LaGrange  
Miles-LaGrange & Associates  
515 Central Park Drive, Suite 400  
Oklahoma City, Oklahoma 73105  
(405) 524-1800

In-House Counsel for FDIC:

Mark McMurry  
Federal Deposit Insurance Corporation  
5080 Spectrum Drive, Suite 400 West  
Dallas, Texas 75248  
(508) 389-5085 (New)

(8) State of Oklahoma v. Angelo Percil Andrews, Phillip Cook and Gilbert Lookinglass, CRF-85-2962

Substance of Case:

This was a case involving three defendants charged with Rape in the First Degree and Forcible Vaginal Intercourse and Burglary One.

The victim opened her door early in the morning believing it to be her husband. When she unlocked the door, a male, later identified as Gilbert Lookinglass, pushed his way inside and put a knife to her throat. He sexually molested her as the other two defendants entered her residence. She recognized one of the defendants.

The first defendant then bound, gagged and raped the victim twice. The other two defendants made no effort to stop the attack, burglarized her apartment and then conversed with each other. After the attack, all the defendants left with her property. One defendant was picked from a photo line-up.

Parties Represented:

State of Oklahoma

Nature of Participation:

I was counsel on this case and engaged in extensive negotiations because of problems with the State's witness.

## Vicki Miles-LaGrange

Disposition of Case:

A blind plea was entered and following argument by the prosecution, the primary defendant was sentenced to 50 years on the Rape and 7 years on the Burglary, to run consecutively.

(a) Dates of Representation:

May, 1985 - September, 1985

(b) Court & Judge(s) Before Whom Case Was Litigated:

The Honorable Karl Gray, District Judge  
Oklahoma County District Judge

(c) Counsel for State

Vicki Miles  
Assistant District Attorney  
320 Robert S. Kerr Avenue  
Oklahoma City, Oklahoma 73120  
(405) 278-1600

Counsel for Defendant:

Bob Carpenter  
217 N. Harvey  
Oklahoma City, Oklahoma 73102  
(405) 232-1515

Tony Adeo  
(Address Unknown)

(9) In Re Northwest Territory, Inc. (No Docket Number)

This was a non-judicial foreclosure of a multi-family mortgage held by the Secretary of the Department of Housing and Urban Development (HUD) under Title II of the National Housing Act. As a Foreclosure Commissioner appointed by the Secretary of HUD, the sale was timely and commenced with the intervening adjournment because of an asbestos problem on the premises which was not previously detected.

The Notice of Default and Foreclosure Sale and the Revised Notice thereto were properly posted, published and mailed. Two sets of jurisdictional time requirements were compiled with because of the adjournment in this case.

Vicki Miles-LaGrange

**Parties Represented:**

United States Department of Housing and Urban Development

**Nature of Participation:**

I was the Foreclosure Commissioner designated by the Secretary of HUD to conduct the non-judicial foreclosure and close the same.

**Disposition of Case:**

The property sold at sale for the highest bid of \$1,500,000.00. The property was subsequently closed with the Deed transferred to the buyer.

**(a) Dates of Representation:**

July 1992 - April 1993

**(b) Court & Judge(s) Before Whom Case Was Litigated:**

Not Applicable.

**(c) Foreclosure Commissioner:**

Vicki Miles-LaGrange  
Miles-LaGrange & Associates  
515 Central Park Drive, Suite 400  
Oklahoma City, Oklahoma 73154  
(405) 524-1818

**Counsel for HUD:**

Clarence Wilson  
HUD Chief Counsel  
Oklahoma City Office, Region VI  
200 N.W. 5th Street  
Oklahoma City, Oklahoma 73102-3202  
(405) 231-5281

Vicki Miles-LaGrange

- (10) Southern Federal Savings Bank, formerly Southern Federal Bank for Savings, by and through its Conservator, Resolution Trust Corporation, as Successor-In-Interest to certain assets of Southern Federal Savings Bank v. James Lowery and Barbara Lowery (Husband and Wife); Grant Bailey and Lisa G. Bailey (Husband and Wife); Treasurer of Oklahoma County; Credit Services, Inc., CJ-91-1784

Substance of Case:

This case was a typical real estate foreclosure under Oklahoma law which involved many issues including, assignment of mortgage, common-law spousal interest, disclaimers, release of liens. The case also involved title curative work. The mortgage in this case was subsequently sold to a third party.

Parties Represented:

The Resolution Trust Corporation (RTC) as Successor-in-Interest to certain assets of Southern Federal Savings Bank.

Nature of Participation:

I was counsel on this matter and complied with all of the jurisdictional requirements to foreclose the property in compliance with the applicable statutes.

Disposition of Case:

The property was foreclosed and a Sheriff's Deed was issued and recorded.

(a) Dates of Representation:

November 1990 - December 1992

(b) Court & Judge(s) Before Whom Case Was Litigated:

The Honorable James Blevins, District Judge  
Oklahoma County District Court

## Vicki Miles-LaGrange

(c) Counsel for RTC:

Vicki Miles-LaGrange  
 Miles-LaGrange & Associates  
 515 Central Park Drive, Suite 400  
 Oklahoma City, Oklahoma 73105  
 (405) 524-1800

In-House Counsel for RTC:

William Farris  
 Resolution Trust Corporation  
 P.O. Box 91183  
 Baton Rouge, Louisiana 70821  
 (504) 399-1140

18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I was counsel and/or co-counsel on five major personal injury cases that were settled prior to trial and resulted in major recoveries for clients. Complex questions of fact and law were involved in all of these cases.

As an Assistant District Attorney, I represented the State of Oklahoma in the successful prosecution of several hundred misdemeanor and felony cases including, Driving Under The Influence cases, general felony crimes, sex crimes, First Degree Murder, Manslaughter and a variety of other crimes.

As Chairman of the Oklahoma Senate Judiciary Committee, I presided over and determined the propriety of hearing of legislation pertaining to civil procedure, probate, workers' compensation, judgment and appeals, insurance, torts, liens, divorce, custody, landlord and tenant and a variety of related law and justice issues.

As a State Senator, I was the principal author of enacted Workers' Compensation Reform legislation. The law provided, among other things, for a variety of reforms including the establishment of an Ombudsman Program to provide information to employees/employers to help protect their rights as claims progress through the system; increased funeral benefits; prohibited health care providers from charging



## Vicki Miles-LaGrange

more for workers compensation patients and a procedure for evaluation of rates by the Administrator; directing the State Property and Casualty Board to adopt rules and regulations for appeals of rating classifications by employers; modification of the definition of permanent impairment; requiring state and its agencies to provide temporary total disability benefits; broadening the use of a third physician's opinion.

As a State Senator, I was the principal author of the law creating the crime of stalking. Punishment is a misdemeanor with imprisonment of up to one year in the county jail and/or fine of up to \$1,000.00. The law provides for a felony for a subsequent offense under certain specified circumstances including commission of a second act of stalking or by a person on probation or parole.

As a State Senator, I was the principal author of the law which amended the Fair Housing Act Amendments to certify Oklahoma's compliance with federal law and to continue recognition and delegation by HUD to the Oklahoma Human Rights Commission. Among other things, the law defines housing discrimination practices; establishes the administrative procedures to implement the Act; clarifies the investigative responsibilities of the Oklahoma Human Rights Commission and defines the civil penalties, relief and awards under the law.

As a State Senator, I was the principal author of legislation entitled the Judgments and Post Judgment Procedure Act. The legislation addressed a variety of related areas including the contents of judgments, decrees and appealable orders; allows for joinder of a motion for judgment notwithstanding the verdict and a motion for new trial and time of filing; describes a premature and supplemental petition in error and procedures therefor; addressed the finality of judgment issue; established procedures involving a stay of enforcement after a judgment.

As Chairman of the Law and Justice Committee of the National Conference of State Legislatures (NCSL), I exercised jurisdiction on behalf of NCSL over issues including constitutional federalism, criminal law and criminal history records, civil rights, juvenile justice, Indian gaming, asset forfeiture and sovereign immunity. The Committee also had an informal oversight role over the State and Local Legal Center and filed amicus briefs on a variety of issues on behalf of NCSL.

Vicki Miles-LaGrange

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Since my confirmation as United States Attorney, the United States Department of Justice agreed that I could receive contingent and other fees for identified pending cases up to two years from the date of confirmation.

To the extent that the Oklahoma Supreme Court has approved of referral fees, I expect to receive such fees when the cases are completed or when the lawyers have been paid. Such fees, at this time, are speculative and contingent upon recovery.

The source of such outstanding fees are listed on an attached AO-10. (See Attachment B).

To date these identified cases remain unresolved. I am, however, prepared to forego these fees owed to me prior to confirmation, if required.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

Title 28 U.S.C. §455, entitled "Disqualification of Justice, Judge, or Magistrate", provides the circumstances under which disqualification is mandated and under which it is optional. Should I have any reason to believe that an appearance of conflict is a reasonable belief and that recusal is optional, I would articulate the facts to counsel of all parties to the case within the spirit of §§ 455(a) and (e). After full disclosure and discussion on the record, I will accept the decision of the parties. If all are comfortable with my continuing in the matter, I will. If any of the parties objects to my continuing, the matter will be transferred to a colleague.

If the conflict is of a business nature and is discovered after substantial judicial resources have been devoted to the matter, I would weight the option of divestiture and determine whether to recuse, or proceed with the case and divest myself of the interest that provides the grounds for the conflict.

## Vicki Miles-LaGrange

If the conflict is one enumerated in 28 U.S.C. §455(b), recusal is mandatory and cannot be waived by the parties. I would recuse.

The provisions of §455(b) are mandatory and will be respected by me.

Because of potential conflicts-of-interest, I will accept no cases in which the United States of America is a party and such cases are pending on the date of my confirmation. Further, I will accept no cases which were opened "matters" in the United States Attorney's Office during my tenure.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment B. Form AO-10.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment C. Financial Net Worth Statement and Schedules.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Oklahoma State Senate

- o Senator (D.- Okla.), Dist. 48, 1986-1993

Democratic National Committeewoman, State of Oklahoma

- o Served on the Democratic National Committee, 1988-1993

## Vicki Miles-LaGrange

Clinton/Gore Campaign

- o Clinton/Gore Surrogate Speaker to 14,000 African-American women at Alpha Kappa Alpha convention, New Orleans, Louisiana, July 1992.
- o One Woman/One Vote National Women's Advisory Committee for Clinton/Gore, September 1992.
- o Hosted luncheon for Bob Nash, Former Economic Policy Advisor to Governor Bill Clinton, Oklahoma City, Oklahoma, October 1992.
- o Presented 30 radio commercials for Clinton/Gore Ticket, KTLV Radio AM 1220, Oklahoma City, Oklahoma, November 1-2, 1992.

Steve Lewis, (D.-Okla.), for U.S. Senate Campaign, 1992

- o Canvassed, spoke and hosted reception for Steve Lewis for U.S. Senator. He is currently U.S. Attorney for the Northern District of Oklahoma.

David Boren, (D.-Okla.), for U.S. Senate Campaign, 1989

- o Participated in campaign commercials for Senator Boren.

Michael Dukakis, Democrat for President Campaign, 1988

- o Canvassed and spoke for Michael Dukakis

Clarence Cooper, (D.-Ga.), for Fulton County Commissioner, Summer 1974

- o Coordinated, canvassed and spoke for Clarence Cooper, who was recently confirmed to the United States District Court in Atlanta, Georgia.

Hannah Atkins, (D.-Okla.), for State Representative Campaign, 1968 and 1970

- o Canvassed, organized and spoke as a "Hannah's Helper".

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Miles-LaGrange, Vicki L.	2. Court or Organization  United States District Court Western District of Oklahoma	3. Date of Report  9/22/94
4. Title (Article III Judges indicate active or senior status; Magistrate judges indicate full- or part-time)  -	5. Report Type (check appropriate type) <u>X</u> Nomination, Date <u>9 / 22 / 94</u> - Initial - Annual - Final	6. Reporting Period  
7. Chambers or Office Address  	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

<input type="checkbox"/> NONE (No reportable positions)	Attorney General's Advisory Committee (Attorney General Janet Reno)
Representative _____	
Board of Directors _____	Moran Children's Museum
Trustee _____	Oklahoma City University (con't next page)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

<input type="checkbox"/> NONE (No reportable agreements)	
May 1993	Jerry Kirksey, Esq. - Four outstanding personal injury cases
	Fred McCann, Esq. - One personal injury case; One insurance interpleader case
*The terms of my agreement with both of these attorneys on outstanding cases referred in the contingent and other cases is 1/3rd of net unless tried, then 25% of net.	

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

<input type="checkbox"/> NONE (No reportable non-investment income)	
1	
2 Jan.-Sept. 1993	Oklahoma State Senate - Gross Salary \$ 23,518.83
3 Jan.-Sept. 1993	Miles-LaGrange & Associates - Gross Law Office Income \$ 65,102.00
4 Jan. 1993	Bill Cosby's "You Bet Your Life" Show - Gross TV Game Show Winnings \$ 1,069.50
5 1993	Palm Beaches Medical Center \$ (S)
	\$



AD-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Miles-LaGrange, Vicki L.		2. Court or Organization		3. Date of Report  9/22/94	
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)  "		5. Report Type (check appropriate type) ___ Nomination, Date _____ ___ Initial ___ Annual ___ Final		6. Reporting Period	
7. Chambers or Office Address		8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____  Reviewing Officer Signature _____			

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

<input type="checkbox"/> NONE (No reportable positions)	(Current)**
Trustee	University of the Ozarks
Board of Directors	Oklahoma Foundation for Excellence
Executive Board	Last Frontier Council, Boy Scouts of America

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.) (con't next page)

## DATE

## PARTIES AND TERMS

<input type="checkbox"/> NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

<input type="checkbox"/> NONE (No reportable non-investment income) ** (For Legal Services Rendered)
** (Compensation Other Than From U.S. Govt., In Excess of \$5,000.00 In Past 2 Yrs.)
1. For Settlement of Personal Injury Cases
2. Maryland Casualty Company
3. Mid-Continent Insurance Company
4. State Farm Fire & Casualty Company
4. Allstate
5. The Hartford Insurance Group

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Miles-LaGrange, Vicki L.	2. Court or Organization	3. Date of Report  9/22/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type) ____ Nomination, Date _____ ____ Initial ____ Annual ____ Final	6. Reporting Period
7. Chambers or Office Address	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions) (Last Two Preceding Years)\*\*

Partner; Officer Miles-LaGrange & Associates (Law Practice)

Board of Directors Oklahoma City Public School Foundation

Board of Directors Eastside YMCA

Board of Directors A Chance for Youth

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

☐

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1 (B) For Settlement of Wrongful Death Case \$

2 1) Norman & Edem \$

3 (C) For Outside Counsel Work \$

4 1) Resolution Trust Corporation \$

5 \$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
Vicki Miles-LaGrange	9/22/94

## IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

<input type="checkbox"/>	NONE (No such reportable reimbursements or gifts)	
1		
2	EXEMPT	
3		
4		
5		
6		
7		
8		

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

<input type="checkbox"/>	NONE (No such reportable gifts)		
1			
2	EXEMPT		\$
3			\$
4			\$
			\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

<input type="checkbox"/>	NONE (No reportable liabilities)		
1	Tiber Island Cooperative Homes, Inc.	Washington, D.C. Condominium jointly owned with my Father	L
2			
3			
4			
5			
6			
7			

\* VALUE CODES: J = \$15,000 or less    E = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Vicki Miles-LaGrange

Date of Report

9/22/94

## VII. INVESTMENTS AND TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (Including trust assets) <small>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Art. Code1 (A-B)	(2) Type (e.g., div., rent or int.)	(1) Value Code2 (J-F)	(2) Value Method Code3 (Q-W)	(1) Type (e.g., buy, sell, exch., redemption)	If not exempt from disclosure			
						(2) Date: Month Day	(3) Value Code2 (J-F)	(4) Gain Code1 (A-B)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Condominium Washington, D.C.		NONE	L	R		EXEMPT			
2 *Jointly owned w/Father									
3 *Purchased 1981 *\$70,000.00									
4 Undeveloped Land Orala, Florida		NONE	J	W		EXEMPT			
5 State Street Research Merrill Lynch (Adm.)		NONE	J	W		EXEMPT			
6 *Mutual Fund									
7 Okla. State Employees' Retirement (Defined Benefit Plan)		NONE	K	W		EXEMPT			
8 Accounts Receivable * Fred McCann, Esq.	B		J	W		EXEMPT			
* Jerry Kirksey, Esq.		NONE	J	W		EXEMPT			
10 * See Part II For Explanation U.S. Savings Bond		NONE	J	W		EXEMPT			
11									
12									
13									
14									
15									
16									
17									
18									
19									
20 *No expectation of benefits from spouse's assets									

1 Income/Gain Codes:	A=\$1,000 or less (See Col. B1 & D4)	B=\$1,001 to \$2,500 F=\$250,001 to \$500,000	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000	D=\$5,001 to \$15,000 H=More than \$1,000,000
2 Value Codes:	E=\$5,001 to \$50,000 (See Col. C1 & D3)	F=\$51,001 to \$50,000 O=\$500,001 to \$1,000,000	I=\$50,001 to \$100,000 P=More than \$1,000,000	M=\$100,001 to \$250,000
3 Value Method Codes:	Q=Appraisal (See Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

## FINANCIAL DISCLOSURE REPORT (cont'd)

NAME of Person Reporting	Date of Report
Vicki Miles-LaGrange	9/22/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Vicki Miles-LaGrange*

Date September 22, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	1,500	00	Notes payable to banks—secured	29,853	00
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Life insurance—add schedule	4,846	00	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule		
Real estate owned—add schedule	Estimate 210,000	00	Chattel mortgages and other loans payable	110,117	00
Real estate mortgages receivable			Other debts—liabilities		
Automobiles and other personal property	81,720	00			
Cash value—life insurance					
Other securities—liabilities Retirement	15,443	00			
			Total Liabilities	139,970	00
			Net Worth	178,594	00
			Total Liabilities and net worth	318,564	00
Total Assets	313,564	00			
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor (Spouse's Car)	Approx. 8,000	00	Are any assets pledged? (Add schedule.) Except mortgages and real estate	No	
On basis of contracts No. of 9/94 Auto Lease for 3 years	319	00	Are you defendant in any civil or legal actions?	No	
Legal Claims	None		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

ATTACHMENT C

## FINANCIAL STATEMENT

Individual

BORROWER		CO-BORROWER	
NAME	Vicki Miles-LaGrange	NAME	
SOCIAL SECURITY NO.	440-50-4191	SOCIAL SECURITY NO.	
OCCUPATION	United States Attorney	OCCUPATION	
TERM	11 months	TERM	
HOME ADDRESS	6600 N.E. 63rd Street	HOME ADDRESS	
HOME PHONE NO.	(405) 771-3132	HOME PHONE NO.	
BUSINESS ADDRESS	210 W. Park Avenue, Suite 400	BUSINESS ADDRESS	
BUSINESS PHONE	(405) 231-5281	BUSINESS PHONE	

To the WestStar Bank, a National Banking Association for the purpose of obtaining and maintaining loans with you, and otherwise procuring credit from time to time, we furnish the following, which is a true, accurate and complete statement of my/our financial condition as of the close of business on the 25th day of May, 1994.

(PLEASE FILL ALL BLANKS, WRITING "NO" OR "NONE" WHERE NECESSARY TO COMPLETE INFORMATION)

ASSETS		LIABILITIES	
CASH ON HAND AND IN BANKS	SCHEDULE A \$ 1,500	NOTES PAYABLE TO BANKS	SCHEDULE H \$ 24,853
NOTES AND ACCOUNTS DUE ME (COLLECTIBLE)	SCHEDULE B	NOTES AND ACCOUNTS DUE OTHERS	SCHEDULE H
CASH VALUE LIFE INSURANCE	SCHEDULE C	DUE RELATIVES	SCHEDULE H
LISTED STOCKS AND BONDS	SCHEDULE D 4,846	TAXES DUE	
OTHER QUICK ASSETS (ITEMIZE)		BALANCE OWING ON CREDIT CARDS (Itemize)	
QUICK ASSETS	\$	REAL ESTATE MORTGAGES	SCHEDULES F & G 110,117
UNLISTED STOCKS & BONDS	SCHEDULE E		
CITY REAL ESTATE	SCHEDULE F 110,000		
COUNTRY REAL ESTATE	SCHEDULE G 100,000		
AUTOMOBILE & PERSONAL PROPERTY (COST)	81,725	OTHER LIABILITIES (Itemize)	
OTHER ASSETS (ITEMIZE) Retirement	15,893		
(Include Vested Company Benefits)			
		TOTAL LIABILITIES	\$ 134,970
		NET WORTH	178,894
TOTAL ASSETS	\$ 313,564	TOTAL	\$ 313,564

## CONTINGENT LIABILITY

NOTES ENDORSED OR GUARANTEED BY ME Auto Financial Group (Spouse's Car) \$ 5,000

LETTERS OF CREDIT \$

OTHER THAN ABOVE SPECIFIED \$

## GENERAL INFORMATION

DATE OF BIRTH (BORROWER) 09-30-53

DATE OF BIRTH (CO-BORROWER)

ARE YOU INVOLVED IN ANY LITIGATION? No IF SO, GIVE DETAILS

NO. OF DEPENDENTS 1

Foster Child

HAVE YOU EVER BEEN ADJUDGED BANKRUPT? No IF SO, GIVE DETAILS

DOES ANY OF THE PROPERTY LISTED IN THE ABOVE STATEMENT BELONG IN PART TO ANOTHER PERSON OR ENTITY? Yes IF SO, EXPLAIN The Washington condominium is also in my Father's name.



## SCHEDULE E UNLISTED STOCKS &amp; BONDS

FACE VALUE BONDS, NUMBER SHARES STOCK	DESCRIPTION OF SECURITY	VALUE	METHOD OF VALUATION	INCOME RECEIVED LAST YEAR	TO WHOM PLEGDED
TOTAL	\$			\$	

SCHEDULE F CITY REAL ESTATE

LOCAL OR LEGAL DESCRIPTION	TITLE IN NAME OF	COST	VALUATION	AMOUNT OWED	MORTGAGE HELD BY	MONTHLY PAYMENTS
430 M. Street S.W. #704 Washington, D.C.	Vicki & Charles Miles	70,049	100,000	45,956	Tiber Island Coop Homes	1,025
Silver Springs, Ocala, FL	Vicki Miles	10,000	10,000	- 0 -		
	TOTAL	\$ 80,049	110,000	45,956		\$ 1,025

## SCHEDULE G. COUNTRY REAL ESTATE

LEGAL DESCRIPTION	SUBDIVISION NUMBER ACRES	COUNTY	STATE	COST	VALUATION	AMOUNT OWED	MORTGAGE HELD BY	PAYMENT FREQUENCY & AMOUNT
6600 N.E. 63rd Street	10	Oklahoma	OK	\$80,000	100,000	64,541	Mortgage Clearing	\$ 830
TOTAL				\$ 80,000	100,000	64,541		\$ 830

SCHEDULE H	NOTES PAYABLE
------------	---------------

ORIGINAL AMOUNT	DUE TO	BALANCE OWING	PAYMENT TERMS	MATURITY	COLLATERAL
21,341	Okla. Highway C.U.	6,664	Monthly	1995	1990 Chrysler New Yorker
6,000	Okla. Highway C.U.	3,824	Monthly	1995	None
15,000	West Star Bank	9,500	Principal Payment Quarter Interest		Accounts Receivable From Former Law Practice. This Was A Credit Line for Forw Business.
3,000	West Star Bank	2,365	168.00 monthly	1996	None
2,500	Sight & Sound	2,500	88.00 monthly	1995	Appliances
	TOTAL	\$ 24,853	(minimum)		

GROSS MONTHLY INCOME				
ITEM	BORROWER	CO-BORROWER	MONTHLY INCOME	TOTAL ANNUAL INCOME
Base Empl. Income				
Overtime				
Bonuses				
Commissions	-			
Dividends/Interest				
Net Rental Income				
Other				
Other				
<b>TOTAL</b>				

### ADDITIONAL INFORMATION

I/WE THE UNDERSIGNED, HEREBY SOLEMNLY CERTIFY AND DECLARE THAT THE ABOVE STATEMENT, SCHEDULES AND REPRESENTATIONS CONSTITUTE A TRUE AND ACCURATE ACCOUNT OF MY/OUR FINANCIAL CONDITION.

YOU ARE HEREBY AUTHORIZED TO CONTACT ANY APPROPRIATE THIRD PARTY FOR THE PURPOSE OF VERIFYING THE FINANCIAL INFORMATION CONTAINED HEREIN.

I/WE AGREE TO AND WILL NOTIFY YOU IMMEDIATELY IN WRITING OF ANY MATERIALLY UNFAVORABLE CHANGE IN MY/OUR FINANCIAL CONDITION, AND IN THE ABSENCE OF SUCH NOTICE, OR OF A NEW AND FULL WRITTEN STATEMENT, YOU MAY RELY ON THIS FINANCIAL STATEMENT AS CONTINUING AND SUBSTANTIALLY CORRECT.

DATE \_\_\_\_\_ 19 \_\_\_\_\_

SIGNED BORROWER

DATE \_\_\_\_\_ 19 \_\_\_\_\_

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1038 1039 104



Vicki Miles-LaGrange

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.
  - Volunteer for the Child Abuse Response Center, 40 hours, 1992-1993
    - Prepared newsletter on a quarterly basis
  - Volunteer Story-Teller to Inner-City School Children, 50 hours, 1983 - 1990
    - Read and told stories to school children, especially during Black History Month at selected Oklahoma City Public School sites.
  - Volunteer at Coffee Creek Riding Center, 40 hours, 1992-1993
    - Assisted physically-handicapped and mentally disturbed children in therapeutic horseback riding.
  - Volunteer at Jesus House for the Homeless, 4 hours, 1993
    - Prepared and served Thanksgiving Dinner to the homeless.
  - Volunteer at Community Learning Center, 80 hours, 1990-1992
    - Tutored functionally illiterate adults in reading.
  - Volunteer 7th Grade Government Teacher, 36 hours, 1990-1991
    - Taught Civics and Government at my former junior high school, Moon Middle School, which was listed at that time on the "academically at-risk list" by the Oklahoma Department of Education.
  - Board Member/Volunteer at ARK Interfaith Family Shelter for the Homeless, 25 hours, 1984-1985
    - Active board member and frequent volunteer for necessary housekeeping tasks at the shelter.
  - Board Member/Volunteer at Southeast Area Community Health Center, 30 hours, 1983-1984
    - Active board member and frequent volunteer for tasks at the Women's, Infants' and Children (WIC) Clinic.

Vicki Miles-LaGrange

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion – through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Yes. There is a 13-member Federal Judicial Advisory Committee in Oklahoma to recommend candidates for nomination to the federal courts. The Committee is composed of some of Oklahoma's most distinguished citizens. It represents a broad spectrum of race, ethnicity, gender, occupation, and geography in our state.

Yes. The Federal Judicial Advisory Committee received more than 42 applications of well-qualified candidates for two judicial vacancies. More than 20 interviews were conducted by the Committee. I was one of 10 candidates recommended to Senator David Boren from which he selected one person for each vacancy to be conveyed to the President of the United States.

I responded to a published Notice of Federal Judgeship Vacancies from the Federal Judicial Advisory Committee which appeared in The Oklahoma Bar Journal. I completed the extensive application and submitted, as instructed, to the 13-member Committee.

I was contacted by the Chairman of the Committee to appear for an interview in Tulsa, Oklahoma on June 24, 1994. I responded to questions from most members of the Committee during a rigorous one-hour interview. I was subsequently notified by Senator Boren that he had selected me to recommend, to the President, for appointment to one of the judicial vacancies, upon confirmation by the United States Senate.

## Vicki Miles-LaGrange

I completed all of the official documentation and subsequently was interviewed by a panel of lawyers from the United States Department of Justice in August, 1994; by the Federal Bureau of Investigation in September, 1994; and, by the 10th Circuit American Bar Association representative in September, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Federal judiciary has become the target of frequent criticism in many circles because of judicial activism, or unwarranted usurpation of the prerogatives of the other coequal branches of government. The executive and legislative branches of the government are subject to judicial restraint. The primary check upon the judicial power is self-restraint.

**Vicki Miles-LaGrange**

The proper role of the Federal judiciary is to interpret the statutes and constitution of the United States, ascertain the intent of the drafters, and apply the rules of law to parties before the court. When discharging this duty, courts must be mindful that it is the intent of Congress that must serve as the foundation of all statutory construction. As Justice Marshall wrote in Osborne v. Bank of the United States, 22 U.S. 738, 866 (1924), the judiciary "has no will in any case ... Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect to the will of the legislature; or in other words, to the will of the law." This does not mean that legal principles do not evolve through case law, only that the evolution must be guided by legislative intent and constitutional principles.

Judicial activism, independent of statutes and constitutional principles, leads not only to criticism but to an erosion of the system of checks and balances. Therefore, self-restraint must be exercised by the judiciary so that it may fulfill its proper role as a separate but equal branch of government.

## United States Senate

### I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. *Full name (include any former names used.)*

William Hamilton Walls

2. *Address: List current place of residence and office address(es).*

302 Essex County Hall of Records, Newark, NJ 07102 (office)  
381 Broad St., Apt. 1701, Newark, NJ 07104 (home)

3. *Date and place of birth.*

November 28, 1932 -- Atlantic City, NJ

4. *Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).*

Divorced.

5. *Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.*

Dartmouth College -- 1950-1954, May, 1954 -- A.B. -- cum laude  
Yale Law School -- 1954-1957, May, 1957 -- LLB.

6. *Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, non-profit and otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.*

1957-59 - Clerkship with Frank Mulligan, Esq. of Kirkman, Mulligan, Bell & Armstrong, Esqs., Boardwalk National Bank Bldg., Atlantic City, NJ

1959-62(3) - Associate of Herbert Klosk, Esq. 1060 Broad St., Newark, NJ 07102.

1962-68 - Assistant Corporation Counsel, City of Newark, City Hall, Newark, NJ 07102. Shared private law offices with James E. Abrams, Esq., Harold Ashby, Esq. and Logan McWilson, Esq., 189 Halsey Street, Newark, NJ.

1968-70 - Municipal Court Judge, City of Newark. Part-time. Private solo practice, 790 Broad Street, Newark, NJ 07102

1970-73 - Corporation Counsel, City of Newark. Part-time. Partnership of Walls, Lester & Smith, 790 Broad Street, Newark, NJ (1972)



1973-75 - Sole practice, 790 Broad Street, Newark, NJ 07102

1974-77 - Business Administrator, City of Newark, Newark, NJ 07102

1977-79 - Judge, Essex County Court, Essex County, Newark, NJ 07102

1979-present - Judge, Superior Court of Newark, Essex County, Newark, NJ 07102

7. *Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.*

Army National Guard reservist -- 1957-1960 -- field art, 2d Lt. 02298464, honorable discharge, October 3, 1960.

8. *Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Commuttee.*

Phi Beta Kappa -- Dartmouth College

9. *Bar Association: List all bar association, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.*

Essex County Bar Association

Garden State Bar Association

National Bar Association

Willard C. Heckel Inns of Court -- Chair of Membership Committee, 1991-1993

Supreme Court Committee on Extrajudicial Activities

Supreme Court Committee on Judicial Education, 1984

Chair, Committee on Trials -- Supreme Court Task Force on Municipal Courts, 1984

Presiding Judge-Civil Division, Superior Court, Essex County, Dec. 1993 to present

10. *Other Membership: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.*

I do not belong to any organization, which is active in lobbying before public bodies, nor any other organizations.

11. *Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.*

1959 State of New Jersey

1959 U.S. District Court for the District of New Jersey

1963 U.S. Court of Appeals for the Third Circuit.

12. ***Published Writings:*** List the titles, publishers, and dates of books, articles, reports, or other published materials you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were available to you, please supply them:

None.

13. ***Health:*** What is the present state of your health? List the date of your last physical examination.

Good. April, 1994.

14. ***Judicial Office:*** State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1968 to 1970 -- I was appointed by the then Mayor as a judge of the Newark Municipal Court, a court which jurisdiction involves disorderly persons offenses, municipal ordinance enforcement and violations of the State's motor vehicle law and regulations.

1977 to 1978 -- I was appointed by the Governor with the advice and consent of the Senate to be a judge of the Essex County Court, which jurisdiction was unlimited, civil and criminal, within the specific county.

1979 to present -- I became, by act of statutory merger, a judge of the Superior Court, the trial court of statewide, original, unlimited civil and criminal jurisdiction. Representative types of cases are breach of contract actions, tort cases, all criminal trials and matters involving real or personal property.

15. ***Citations:*** If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

New Jersey Superior Court trial judges do not routinely issue written opinions. However, I did write the following:

- (1) Allstate Insurance Co., v. Alvarado, 227 N.J. Super 152 (Law Div. 1988) and Muchell v. V & V Inc., 263 N.J. Super 412 (Law Div. 1992)

The following are eleven cases wherein I gave a significant oral opinion:

Moake v. Source International Corp., A-1029-92T5F (1993)

A product liability action was commenced by New Jersey citizens against a

German furniture manufacturer. The interrogatories were propounded by plaintiff upon defendant were pursuant to New Jersey Rules of Court. The defendant objected asserting that such interrogatories had to be served in accordance with the Hague Convention. Relying upon the U.S. Supreme Court decision in Societe Nationale Industrielle Aerospatiale v. United States District Court, 482 U.S. 522, 107 S. Ct. 2542, 96 L. Ed. 2d 461 (1987), I determined that it was not mandatory that discovery activities be conducted pursuant to the Convention particularly wherein such interrogatories were not extraordinarily complex nor overburdensome. I concluded that *"international comity will not be offended nor the dictates of our law by requiring the defendant German national to answer interrogatories as presently propounded."*

Natilli v. People's Express, A-2080-88T1 (1989)

Plaintiff began an action of malicious prosecution against defendant airline arising out of the airline's obtaining his arrest when while at the airport he had said to another passenger, *"they ought to blow this plane up."* I granted defendant's motion for summary judgment to dismiss such tort claims because in today's society terroristic acts in airports and other public places are no longer unique or uncommon. The action of the airline in having the plaintiff, who had publicized such remarks in a public place, arrested was grounded in probable cause as a matter of law.

Satkunas v. Jinkins, A-2889-85T1 (1986)

Plaintiff passenger sought damages against her host automobile driver because he had removed seat belts from his vehicle before she and he were involved in an accident with another motor vehicle. Plaintiff testified that if she had been wearing seat belts, she would not have hit the windshield upon collision and sustained alleged injuries. I dismissed her claims because her assertion was nothing more than her own personal belief, unsupported by requisite expert testimony as to what seat belts would or would not have done probably in such collision. Such evidence could not come from lay opinion of the plaintiff.

Drill v. Planning Board of Township of West Orange, A-1228-87T7 (1988)

A landowner sought to obtain a subdivision of her property within a single family residential zone. The local planning board granted approval. However, pursuant to statute, it was required that such property abut a street of certain width. The landowner sought a variance from this requirement which was denied by the planning board. I found that such denial was unreasonable which was conditioned upon that landowner having to widen a street when no other landowner had been required to do same in that neighborhood.

Criador v. UMDNJ, A-2144-84T1 (1986)

Three former hospital workers sued the hospital alleging wrongful suspension and discharge from employment. I dismissed their claims at the end of plaintiffs' case because factually they had violated their employment duties. They failed to produce any evidence of unjustified actions by the defendant which would support a favorable verdict. The evidence was clear that they had factually failed to comply with their responsibilities as technicians.

Gregory Marketing Corp., v. Frederick Phillips, A-5712-81T3

The arbitrator who was called to determine the effect of employment agreements between a food brokerage firm and its president was deemed by me to have made erroneous findings. I found that the arbitrator could not ignore the plain language of the employment agreement which benefitted the former president more than the arbitrator's determination. Nor could the arbitrator create remedies unanticipated by the parties.

Whitley-Woodford v. Jones, A-5426-89T2 (1992)

In a medical malpractice case, I refused to charge the jury on the issue of informed consent because the plaintiff had alleged that the defendant doctor's decision to remove her left fallopian tube was a battery, an invasion of her. She testified that she had not consented to such operation. Therefore, informed consent could not be the basis for a jury instruction because she never had asserted that if she had fully known of the risks, she would not have permitted the operation.

Alemany v. Kunadia, A-6183-92T1 (1994)

New Jersey's automobile insurance law establishes, for the purpose of non-economic compensation, a verbal threshold which was effective January 1, 1989. The issue which arose in several trial courts throughout the State was whether such verbal threshold requirement should be applied where policies had not yet been renewed to *"incorporate that threshold as of the time of accident."* I followed the direction of an Appellate Division decision which in effect determined that rights which plaintiffs do or do not enjoy are determined by the governing law rather than individual insurance policies.

Matthews v. Kroll & Tract, A-3485-92T3 (1994)

The case represents, apparently the first time in New Jersey, an issue of whether an employment agency which sent a prospective employee to the prospective employer is entitled to a fee if that employee is subsequently hired on the basis of that employee's later independent inquiry to the hiring company. I determined that the alleged reasons given by the employer to terminate the employment of that person so as to avoid threatened litigation by the employment agency, evidenced acknowledgment by the employer that it had in fact relied upon the first interview arranged by the employment agency. This decision was recently affirmed by the Appellate Division.

Thompson v. Dix, et als., A-3991-88T2

This case represents a denial by me of a motion to set aside a \$650,000 verdict obtained by plaintiff in her successful gynecological malpractice suit against her former doctor. Having extensively researched data of cost of living in today's northeast, and similar decisions in mid-Atlantic states such as Maryland, I concluded that such award was not unreasonable for pain and suffering experienced by the mother in knowingly giving birth to a stillborn child. The transcript of my oral decision in this matter will be forthcoming.

Goncalves v. Bucyrus-Erie, Inc., A-4958-87T1

The Appellate Division commended my trial conduct of a wrongful death/product liability trial.

- (2) State v. Yarbough, 100 NJ 627 (1985), cert. denied 475 US 1014 (1986)  
A Supreme Court affirmance of the appellate division's reversal of my sentencing of defendants convicted of sexual abuse to consecutive rather than concurrent sentences.

State v. Gladys Kelly, 97 NJ 178

Represents the introduction into our State, by our Supreme Court, of the battered wife defense arising out of a murder, reversing my denial of an expert witness presented for that purpose.

- (3) None

16. Public Office: *State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.*

In January, 1974 I was appointed by Mayor Gibson to be Business Administrator of Newark and thereby responsible, subject to his direction, for the overall supervision and administration of all municipal departments, agencies, personnel and functions. I served in the role until I became a judge in August, 1977. This position is very similar to that of a city manager.

17. Legal Career:

- a) *Describe chronologically your law practice and experience after graduation from law school including:*

- 1) *whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;*

No.

- 2) *whether you practiced alone, and if so, the addresses and dates;*

1968-70, sole practice, 790 Broad St., Newark, NJ 07102  
1973-75, sole practice, 790 Broad St., Newark, NJ 07102

- 3) *the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;*



1957-59 - Clerkship with Frank Mulligan, Esq. of Kirkman, Mulligan, Bell & Armstrong, Esqs., Boardwalk National Bank Bldg., Atlantic City, NJ

1959-62(3) - Associate of Herbert Klosk, Esq. 1060 Broad St., Newark, NJ 07102.

1962-68 - Assistant Corporation Counsel, City of Newark, City Hall, Newark, NJ 07102. Shared private law offices with James E. Abrams, Esq., Harold Ashby, Esq. and Logan McWilson, Esq., 189 Halsey Street, Newark, NJ.

1968-70 - Municipal Court Judge, City of Newark. Private solo practice, 790 Broad Street, Newark, NJ 07102

1970-73 - Corporation Counsel, City of Newark. Partnership of Walls, Lester & Smith, 790 Broad Street, Newark, NJ (1972)

1973-75 - Sole practice, 790 Broad Street, Newark, NJ 07102

1974-77 - Business Administrator, City of Newark, Newark, NJ

1977-79 - Judge, Essex County Court, Essex County, Newark, NJ 07102

1979-present - Judge, Superior Court of Newark, Essex County, Newark, NJ 07102

- b) 1. *What has been the general character of your law practice, dividing it into periods with dates if its character has been changed over the years?*

As I stated above, immediately after law school, I clerked for the late Frank Mulligan, Esq. of Kirkman, Mulligan, Bell & Armstrong, an Atlantic City, New Jersey law firm. That firm was devoted to banking, corporate and commercial work. The senior partner, Elwood Kirkman was then chief executive officer of the Boardwalk National Bank. Upon passing the New Jersey bar in 1959, I moved to Newark where, from 1959 to 1962(3), I was the associate of Herbert Klosk, Esq. (now deceased), 1060 Broad Street in his law practice which was mainly devoted to personal injury and worker's compensation claims. I left that office to become an assistant corporation counsel of the City of Newark (1962-1968), responsible for the City's appellate, chancery, federal court and worker's compensation litigation. During that time I shared private law offices at 189 Halsey St., Newark with the late James E. Abrams, Harold Ashby and Logan McWilson. Basically, my practice was individual plaintiffs' claims in tort and worker's compensation cases and,

to a lesser extent, work in real estate, commercial and matrimonial matters. I practiced in Essex's District, County and Superior Courts and the Division of Worker's Compensation. From 1968-1970, as a sole practitioner with offices at 790 Broad Street, I continued that practice and served as a Newark municipal court judge. In June, 1970 Newark's mayor Kenneth A. Gibson appointed me Corporation Counsel of the City. My private law practice became part of a very short-lived partnership, Walls, Lester & Smith, 790 Broad Street for most of 1972. Upon dissolution of that ill-advised venture, I resumed my single practice at 790 Broad Street, but began phasing that out in 1975 as the demands of the Office of Business Administrator required my complete attention to public affairs, the Mayor having asked me to take that position in January, 1974. In August, 1977 I was appointed to the Essex County Court and in 1979 to the Superior Court, my present office.

2. *Describe your typical clients, and mention the areas, if any, in which you have specialized.*

I had no institutional nor large corporate clients; my clients were individuals of all economic ranges and small corporations.

- c) 1. *Did you appear in court regularly, occasionally or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.*

I appeared in court regularly.

2. *What percentage of these appearances was in:*

- a) *Federal courts.*
- b) *State courts of record.*
- c) *Other courts.*

- a) Federal courts -- 1%
- b) State courts -- 55%
- c) Worker's Compensation Court -- 44%

3. *What percentage of your litigation was:*

- a) *Civil.*
- b) *Criminal.*

My litigation was exclusively civil.

4. *State the number of cases you tried to verdict or judgment (rather than settled) in courts of record, indicating whether you were sole counsel, chief counsel, or associate counsel.*

Approximately 30-40 cases, exclusive of worker's compensation trials. Sole counsel in all cases.

5. *What percentage of these trials was:*

- 1) *Jury.*
- 2) *Non-jury.*

Ninety percent (90%) of the foregoing were before jurors.

18. ***Litigation:** Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each:*

- a) *the date of representation;*
- b) *the name of the court and the name of the judge or judges before whom the case was litigated; and*
- c) *the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.*

Since August, 1977 I have been a full time judge. Immediately prior thereto, I was a full time public official, the Business Administrator of Newark. Consequently, it has been at least some twenty (20) years or more since I personally tried a case as a litigator. My office has long since been closed and files dispersed or destroyed. Unfortunately, therefore, I am unable to particularize my trial experience as requested: Generally, during the 60's and early 70's I, as plaintiff's attorney, tried personal injury, primarily automobile accident, cases in the District, County and Superior Courts of Essex County. Specifically, I remember winning an automobile pedestrian knock-down case before the late judge Leon Milmed, Essex County Court, with Edward G. Madden, Jr., Esq. of Mattson, Madden & Polito (Gateway 1, Newark, New Jersey 07102 201-621-7000) as my adversary. I successfully defended a small chemical products corporation in a commercial suit brought by another corporation in the Bergen County Superior Court before Judge Conrad Schneider. My opponent was Arthur Minuskin (708 Essex County Courts Building, Newark, NJ 07102 (201) 621-2511). Fagan v. Newark, 78 NJ Super 294 (AD 1963) 188 A2d 427 represents my unsuccessful, appellate defense of the City from an adverse worker's death claim based evidentially on "business records," a fire house journal. Over the years, between 1960 to 1972 approximately, I tried cases before the following Essex County judges: John F. Crane, Walter H. Conklin, Roger Yancey, Joseph Sugrue and Robert A. Matthews; in Chancery: Ward J. Herbert and Nelson K. Mintz.

*The following attorneys have practiced before me as a judge within the last five to ten years:*

Carl Greenberg, Budd, Lerner, Gross, Rosenbaum, Greenberg & Sade  
150 JFK Parkway, Short Hills, NJ 07078 (201) 379-4800

John E. Keale, Carpenter Bennett & Morrissey  
Gateway 3, Newark, NJ 07102 (201) 565-2006

Stephen O. Mortenson, Mortenson & Pomeroy  
155 Morris Avenue, Springfield, NJ 07081 (201) 467-9600

Raymond R. Connell, Dwyer Connell & Lisbona  
427 Bloomfield Avenue, Montclair, NJ 07042 (201) 746-9512

Stanley J. Hausman, Hausman & Sunberg  
7 Cleveland Avenue, Caldwell, NJ 07006 (201) 226-8474

Michael Critchley  
354 Main Street, West Orange, NJ 07052 (201) 731-9831

David Maran, Maran & Maran  
1 Riverfront Plaza, Newark, NJ 07102 (201) 622-5303

Cindy Thompson, Offices of Edward Papalia  
333 Littleton Road, Parsippany, NJ (201) 299-9898

James Vasios, Hurley & Vasios  
636 Morris Turnpike, Short Hills, NJ 07078 (201) 467-1300

James F. Carney  
145 Eagle Rock Avenue, Roseland, NJ 07068 (201) 403-0203

Linda B. Kenney, Fair Haven Commons, Suite 302  
740 River Road, Fair Haven, NJ 07704 (908) 219-0099

Harold Braff, Braff Harris & Sukoneck  
570 W. Mt. Pleasant Avenue, Livingston, NJ 07039 (201) 994-6677

Thomas Matthews, Soriano, Henkel, Biehl, Matthews & Marinello  
314 Broad Street, Bloomfield, NJ 07003 (201) 743-1901

Paul J. Hirsch, Whipple Ross & Hirsch  
9 Campus Drive, Parsippany, NJ 07054 (201) 538-5500

Norman S. Karpf, Buttafuoco, Karpf & Arce  
72 Schuyler Avenue, Kearny, NJ 07032 (201) 998-7355

Anthony R. Mautone, Minichino & Mautone  
500 Prospect Avenue, West Orange, NJ 07052 (201) 736-7755

19. ***Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did*

*not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)*

As Business Administrator of the City of Newark I was responsible for the day to day operation of the City, subject, of course, to the direction of the Mayor. I supervised more than a dozen directors of departments and agencies. Included, among other things, was my participation in labor negotiations between the various labor representatives and departments. I directly handled a 1976 sanitation workers strike against the City of Newark which was successfully concluded after four days in favor of the City's original offer.

Member of Supreme Court Committee on Extrajudicial Activities. The purpose of the Supreme Court Committee on Extrajudicial Activities is to propose, subject to the approval of the Supreme Court, guidelines of conduct of judges with regard to teaching, public appearances, public comments, speeches, etc. That committee also responds in an advisory capacity to inquiries from judges as to the propriety of proposed public appearances and conduct.

Member of Supreme Court Committee on Judicial Education 1984. The function of the Supreme Court Committee on Education is to prepare the agenda, speakers and subjects for the annual conference of all state judges. Every November all Superior Court judges, Appellate Division judges and Supreme Court Justices meet in a two and a half day conference for the purpose of attending lectures on diverse subjects such as recent developments in criminal and civil law, psychology in the law, family law, et cetera.

In 1984 the Supreme Court of New Jersey created a Task Force on Municipal Courts which was composed of Superior Court and Municipal Court Judges, trial attorneys, administrative personnel and members of the public. Its purpose was to review the effectiveness of the municipal court system and to make recommendations for reform. I was the Chair of the Committee on Trials which reviewed and revised the trial activity, rules and practice of municipal courts.

Since December, 1993, I have been the Presiding Judge of the Civil Division of Essex County. This civil division is the largest in the state both as to personnel and caseload. My responsibilities are to develop and administer methods of resolution of civil matters and to assign the cases to the various judges. We have twenty-two (22) judges and over 22,000 cases.



## FINANCIAL STATEMENT

## NEW WORTH

WILLIAM H. WALLS

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS				LIABILITIES			
Cash on hand and in banks		4550		Notes payable to banks, secured	none		
U.S. Government securities-add schedule				Notes payable to banks, unsecured	none		
Listed securities-add schedule	none			Notes payable to relatives	none		
Unlisted securities-add schedule	none			Notes payable to others	none		
Accounts and notes receivable:	none			Accounts and bills due	none		
Due from relatives and friends				Unpaid income tax	none		
Due from others				Other unpaid taxes and interest	none		
Doubtful				Real estate mortgages payable-add schedule	none		
Real estate owned-add schedule	none			Chattel mortgages and other liens payable	none		
Real estate mortgages receivable	none			Other debts-itemize: Revolving			
1993 Toyota Camry		15,000		Discover charge card		3589	
Autos and other personal property				Citibank MC		4832	17
Cash value-life insurance State of NJ	(?)			Omnibank MC		5388	55
Other assets-itemize:				AmEx Sign & Travel		4004	04
Art & book collection		37,500					
Home furnishings		25,000		Total Liabilities		17,814	26
				Net Worth		54,235	74
Total Assets		72,050		Total Liabilities and Net Worth		72,050	
CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, co-maker or guarantor	none			Are any assets pledged? (Add schedule)	no		
On leases or contracts	none			Are you defendant in any suits or legal actions?	no		
Legal Claims	none			Have you ever taken bankruptcy?	no		
Provision for Federal Income Tax	none						
Other special debt	none						

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

State of New Jersey annual judicial pension - \$50,000 That pension vested upon my reaching the age of 60 years and is payable upon my actual retirement from the system.

2. *Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in this position to which you have been nominated.*

I will follow the Judicial Code of Ethics, applicable statutes, case law and my conscience.

3. *Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the courts? If so, explain.*

No.

4. *List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)*

See attached Financial Disclosure Report.

5. *Please complete the attached financial net worth statement in detail (Add schedules as called for.)*

See attached Net Worth Statement

6. *Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.*

No.

### III. GENERAL (PUBLIC)

1. *An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.*

In 1991 I was one of the charter organizers of the C. Willard Heckel Inns of Court, Rutgers Law School, Newark, which was initially and uniquely devoted to the practice of criminal law. As chairman of the membership committee, I successfully recruited a richly talented and diverse group of lawyers and judges to serve as masters and barristers in the instruction and guidance of recently admitted lawyers in that important area of law. The purpose of the Inns is to increase the professional proficiency and awareness of its students. Our students were also diverse in background with a commonly held high level of intelligence and motivation. Monthly lecture dinner meetings are held where students participate with masters in the preparation of a trial. I have also been the President of the Newark Boys Choir, a group devoted to developing and exposing the musical talents of inner-city youths.

2. *The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?*

No.

3. *Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated.)*

After submission of responses to a questionnaire from the Honorable Frank R. Lautenberg, I was interviewed by the Senator. Upon his subsequent recommendation of me to the White House, I have since been contracted by the Justice Department and have been interviewed by several Justice Department officials. I have since been interviewed by an ABA representative and a FBI Special Agent.

4. *Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.*

No.

5. *Please discuss your views on the following criticism involving "judicial activism."*

*The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.*

*Some of the characteristics of this "judicial activism" have been said to include:*

- a) A tendency by the judiciary toward problem-solution rather than grievance-resolution;*
- b) A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;*
- c) A tendency by the judiciary to impose broad, affirmative duties upon governments and society;*
- d) A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and*
- e) A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.*

The responsibility of a trial judge is to administer the law as enunciated by the legislature and, when appropriate, as interpreted by appellate courts. In my more than sixteen (16) years of judicial experience, I have consistently followed the above principle. One's task as a trial judge is justifiably defined by stare decisis -- the adherence to both the letter and spirit of precedence. To ignore this established judicial guideline is to invite the criticism discussed in this question.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1988, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial) <b>Walls, William H.</b>	2. Court or Organization <b>U.S. District Court for the District of New Jersey</b>	3. Date of Report <b>14 Sept. 1994</b>
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time) <b>U.S. District Judge</b>	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <b>9/14/94</b> ___ Initial ___ Annual ___ Final	6. Reporting Period <b>January 1993 to August 1994</b>
7. Chambers or Office Address <b>302 Hall of Records Newark, NJ 07102</b>	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Judge Superior Court of the State of New Jersey

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☐

NONE (No reportable agreements)

State of New Jersey judicial annual pension of 50% of current salary, \$50,000, and health benefits vested upon my reaching age of 60 years (November 28, 1992) and is payable upon actual retirement from position of Superior Court Judge.

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1	1993	State of New Jersey (judicial salary)	\$ 99,668.13
2	1/94 to 8/19/94	State of New Jersey (judicial salary)	\$ 65,134.14
3			\$
4			\$
5			\$



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Walls, William H.

Date of Report

14 Sept. 1994

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

EXEMPT

2

3

4

5

6

7

8

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

EXEMPT

2

\$

3

\$

4

\$

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Walls, William H.Date of Report  
14 Sept. 1994

## VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (Including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asset Code <sup>1</sup> (A-S)	Type (e.g., div., rent or int.)	Value Code <sup>2</sup> (J-F)	Value Method Code <sup>3</sup> (Q-W)	(1) Type (e.g., buy, sell, maturity, redemption)	(2) Date: Month Day	(3) Value Code <sup>2</sup> (J-F)	(4) Gain Code <sup>2</sup> (A-S)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 State of N.J. annual,									
2 judicial pension			K	W					
3 (refer to II Agreements)									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									
1 Income/Gain Codes: A=\$1,000 or less (See Col. B1 & D4) 2 Value Codes: E=\$15,001 to \$50,000 (See Col. C1 & D3) 3 Value Method Codes: Q=Appraisal (See Col. C2)	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 K=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000 R=Cost (real estate only) V=Other	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000 P=More than \$1,000,000 S=Assessment W=Estimated	D=\$5,001 to \$15,000 H=More than \$1,000,000 M=\$100,001 to \$250,000 T=Cash/Market						

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Walls, William H.

Date of Report

14 Sept. 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

NONE

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Date 14 Sept. 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

ANSWER: Elaine Patricia Edwards Bucklo.

2. Address: List current place of residence and office address(es).

ANSWER: Residence:

921 West Fullerton  
Chicago, Illinois 60614

Office:

United States District Court  
219 South Dearborn Street  
Suite 1764  
Chicago, Illinois 60604.

3. Date and place of birth.

ANSWER: October 1, 1944; Chelsea, Massachusetts.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

ANSWER: Married to Kenneth G. Eichenold. Ken is program manager at University Hospital, Lincoln Park Center, 990 West Fullerton, Chicago, Illinois 60614.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

ANSWER: Northwestern University School of Law, 1969-1972. J.D., June, 1972.

University of Chicago, 1968. Course work initiated, but voluntarily not completed, for a Masters Degree in Library Science. No degree.

St. Louis University, 1963-1966. A.B., June, 1966.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and

organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

- ANSWER:** 1985-present: U.S. Magistrate Judge, N.D. Illinois.
- 1983-1985: Sole practitioner, Chicago, Illinois.
- 1980-1983: Coin, Crowley & Nord, Chicago, Illinois, Partner.
- 1978-1980: University of California at Davis, Davis, California, Visiting Professor.
- 1974-1979: Devoe, Shadur & Krupp, Chicago, Illinois, Partner and Associate.
- 1973-1974: Morrison & Foerster, San Francisco, California, Associate.
- 1973: Northwestern University School of Law, Chicago, Illinois, Lecturer.
- 1972-1973: United States Court of Appeals for the Seventh Circuit, Chicago, Illinois, law clerk to U.S. Circuit Judge Robert Sprecher.
- 1971: Jenner & Block, Chicago, Illinois, Summer Clerk.
- 1967-1968: Chicago Public Schools, Teacher.
- 1968-1969: St. Vincent's grade school, Chicago, Illinois, Teacher.
- 1968: Chicago Public Library, part-time Library Assistant.
- 1966-1967: National Restaurant Association, Chicago, Illinois, Secretary.
7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

**ANSWER:** No.



8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

**ANSWER:** I received the Women's Bar Association of Illinois Foundation scholarship in 1971 given to the "Outstanding Woman Law Student" in Illinois. I graduated from law school with the award of Order of the Coif.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

**ANSWER:** Advisory Committee, Magistrate Judges Division, Administrative Office, U.S. Courts, 1994-present.

Federal Magistrate Judges Association; secretary, 1994; treasurer, 1994-present.

Federal Bar Association; president, Chicago Chapter, 1992-1993.

Chicago Bar Association; chairperson, Development of the Law Committee, 1989-1990.

American Bar Association; Associate Editor, Litigation Magazine, 1979-1985.

Women's Bar Association of Illinois; board member, 1994-present.

Asian-American Bar Association of the Greater Chicago Area, 1994-present.

Chicago Council of Lawyers; member, approximately 1974-1983; president, 1978-1979.

National Women Judges Association, 1994-present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**ANSWER:** The Federal Magistrate Judges Association and the Chicago Bar Association engage in lobbying. I assume the American Bar Association also engages in lobbying activities.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain

the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

ANSWER: Illinois Supreme Court, 1974.

United States District Court for the Northern District of Illinois, 1974.

United States Court of Appeals for the Seventh Circuit, 1983.

California Supreme Court, 1973. I am no longer an active member of the California bar, having allowed my membership to lapse, since I do not practice law and have no need for the membership.

United States District Court for the Northern District of California, 1973.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

ANSWER: The following are my published writings other than opinions. Copies of the asterisked items are supplied in Appendix 1.

Bucklo, "Rule 45, Fed. R. Civ. P.: Can a Party Be Required to Attend Trial?" *Litigation*, Spring, 1988.\*

Bucklo, *From the Bench*, "How to Complete Discovery Without Growing Old," *Litigation*, Fall, 1987.\*

Bucklo, "All About Litigation," 10 *Litigation* 2 (Fall, 1983).\*

Bucklo, "The Supreme Court Attempts to Define Scierter Under Rule 10b-5, *Ernst & Ernst v. Hochfelder*," 29 *Stan. L. Rev.* 213 (1978).

Bucklo, "Scierter and Rule 10b-5," 67 *Nw. U.L. Rev.* 562.

Comment, "Are Sex-Based Classifications Constitutionally Suspect?" 66 *Nw. U.L. Rev.* 481 (1971).

I have not spoken on issues involving constitutional law or legal policy.

13. Health: What is the present state of your health? List the date of your last physical examination.

**ANSWER:** Excellent. My last physical examination was in June, 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**ANSWER:** U.S. Magistrate Judge, 1985-present. Appointed by the district judges of the Northern District of Illinois. My jurisdiction extends to all federal pretrial matters in civil cases, with review depending upon whether the matter is dispositive or nondispositive; trials by consent of the parties or without consent in Title VII cases; evidentiary hearings on motions for preliminary injunctions; settlement conferences; trials, guilty pleas and sentencing in misdemeanor cases and petty offenses; and preliminary matters in felony cases.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

**ANSWER:** Copies of unpublished opinions listed below are attached as Appendix 2.

(1) a. *Schwinn Bicycle Company v. Ross Bicycles, Inc.*, April 15, 1987 (unreported), reversed, 678 F. Supp. 1336 (N.D. Ill. 1988), reversed, 870 F.2d 1176 (7th Cir. 1989).

b. *EEOC v. Gurnee Inn Corporation*, 1988 U.S. Dist. LEXIS 13574, affirmed, 914 F.2d 815 (7th Cir. 1990).

c. *In re Air Crash Disaster at Sioux City, Iowa* on July 19, 1989, 133 F.R.D. 515 (N.D. Ill. 1990), affirmed in unreported opinion (N.D. Ill. 1991).

d. *Cobraco Manufacturing Company, Inc. v. Valley View Specialties Co.*, 15 U.S.P.Q.2d 1072 (N.D. Ill. 1990), affirmed in unreported opinion (N.D. Ill. 1990).

e. *Koretz v. Heffernan*, 1993 U.S. Dist. LEXIS 1846 (N.D. Ill. 1993), affirmed, 1993 U.S. Dist. LEXIS 17606 (N.D. Ill. 1993).

f. *American Needle & Novelty, Inc. v. Drew Pearson Marketing, Inc.*, 1993 U.S. Dist. LEXIS 161 (N.D. Ill. 1993).

g. *Great Lakes Overseas, Inc. v. Wah Kwong Shipping Group, Inc.*, 1991 U.S. Dist. LEXIS 13250 (N.D. Ill. 1991), affirmed in part, 990 F.2d 990 (7th Cir. 1993).

h. *Mitts & Merrill, Inc. v. Shred Pax Corp.*, 112 F.R.D. 349 (N.D. Ill. 1986), objections overruled, 1986 WL 466 (N.D. Ill. 1986).

i. *Barton v. United States*, 1991 U.S. Dist. LEXIS 4338 (N.D. Ill. 1991).

j. *Ademi v. A.D. Moyer*, 1989 U.S. Dist. LEXIS 5953 (N.D. Ill. 1989).

(2) I have attempted to locate through LEXIS and Westlaw, all opinions reviewing my work. Each year I decide hundreds of motions and there is no system in place that assures that I receive a copy of an order reviewing my orders.

a. *Great Lakes Overseas, Inc. v. Wah Kwong Shipping Group, Ltd.*, 990 F.2d 990 (7th Cir. 1993). My opinion on a difficult issue of jurisdiction was affirmed except for the fact that an order of dismissal with prejudice had been entered by my minute clerk, when the dismissal should not have been with prejudice. The parties never brought the error to my attention.

b. *The Original Great American Chocolate Chip Cookie Company, Inc. v. River Valley Cookies, Ltd.*, 970 F.2d 273 (7th Cir. 1992). I had recommended that defendant's motion for a preliminary injunction be granted and that plaintiff's motion be denied. The district court agreed with me, see 773 F. Supp. 1123 (which incorporates my opinion), but the majority of the Seventh Circuit disagreed. Judge Cudahy dissented.

c. *Consolidated Aluminum Corp. V. Foseco International Ltd.*, 910 F.2d 804 (Fed. Cir. 1990). I tried this patent case as a special master by consent of the parties. I concluded that the patentee had engaged in inequitable conduct, rendering one patent unenforceable. 10 U.S.P.Q.2d 1143 (N.D. Ill. 1988). Judge Hubert Will agreed with my findings, but concluded that the inequitable conduct also rendered additional patents unenforceable. See 716 F. Supp. 316 (N.D. Ill. 1989). Judge Will affirmed my rulings that certain patents were invalid, that defendant had failed to prove its antitrust claims, and that a



request to change inventorship should be denied. Judge Will's conclusions were affirmed by the Federal Circuit.

d. *Dell v. Board of Education, Township High School District 113*, 1994 WL 412447 (7th Cir. 1994), affirmed in part, reversing in part, 1991 U.S. Dist. LEXIS 15427 (N.D. Ill. 1991), and unreported decision of Feb. 7, 1992. Dell was an action for reimbursement of expenses and attorney's fees under the Education of the Handicapped Act and for disqualification of a hearing officer. I found that the cost and attorney's fee applications were time-barred and entered judgment on the pleadings in favor of the state defendants on the disqualification claim. The Seventh Circuit agreed that the costs were time-barred and that plaintiff had failed to state a claim on the disqualification claim. It also concluded that the appropriate statute of limitations on the attorney's fee issue was the state limitation period. It remanded for consideration in light of its decision.

e. *Baxter Travenol Laboratories, Inc. v. Abbott Laboratories*, 84 C 5103, 117 F.R.D. 119 (N.D. Ill. 1987), reversed, 8 U.S.P.Q.2d 1089 (N.D. Ill. 1988) (J. Norgle), was a patent action, in which I decided various discovery motions. In one I held that Abbott had established a *prima facie* case of fraud with respect to one patent and therefore was entitled to production of Baxter's privileged documents prepared in furtherance of the fraud. Judge Norgle disagreed with me.

f. *EEOC v. Commonwealth Edison*, 86 C 236, 1987 U.S. Dist. LEXIS 14052 (N.D. Ill. 1987), affirmed in part, reversed in part, 119 F.R.D. 394 (N.D. Ill. 1988), involved the assertion of attorney client and work product privilege as to various documents. I held that the privileges did not apply as to most of the documents but agreed with defendant as to five documents. Judge Bua concluded that no privilege protected against disclosure of any of the documents.

g. *Slavich v. Local Union 551*, 84 C 454, affirmed in part and reversed in part, 1989 U.S. Dist. LEXIS 12658 (N.D. Ill. 1989) (J. Alesia), involved an action for breach of the duty of fair representation imposed by the Labor Management Relations Act and common law counts. I recommended that defendant's motions for summary judgment as to two counts be denied and as to a third count be granted. Judge Alesia agreed with my recommendation as to the denial of summary judgment but concluded that summary judgment should also be denied as to the third count.

h. *Donnelly v. Yellow Freight System, Inc.*, 85 C 7195 (Dec. 10, 1987), was a Title VII case which I tried on the issues of back pay, retroactive seniority and other benefits. I ruled that plaintiff was entitled to back pay, retroactive seniority, prejudgment interest and attorney's fees. The district court affirmed except for the recommendation of prejudgment interest, 682 F. Supp. 374 (N.D. Ill. 1988) (J. Moran). The Seventh



Circuit affirmed except remanded requiring prejudgment interest, 874 F.2d 402 (7th Cir. 1989), *aff'd*, 494 U.S. 820 (1990).

i. *Schwinn Bicycle Company v. Ross Bicycles, Inc.*, April 15, 1987 (unreported), was an alleged trade dress infringement case. I recommended that a preliminary injunction be denied. Judge Hart reversed, 678 F. Supp. 1336 (N.D. Ill. 1988), but his opinion was reversed, 870 F.2d 1176 (7th Cir. 1989).

j. *Ross v. United States*, 697 F. Supp. 974 (N.D. Ill. 1988), involved a motion to dismiss a County defendant from a civil rights case. I recommended that the motion to dismiss be denied. Judge Bua agreed with me. Subsequently, the case was transferred to Judge Zagel. He reconsidered and granted the motion. Judge Zagel was reversed by the Seventh Circuit, which also held, contrary to my recommendation, which had been adopted by the district court, that an individual defendant was not entitled to summary judgment on the ground of qualified immunity. 910 F.2d 1422 (7th Cir. 1990).

k. *U.S. ex rel. Wilson v. O'Leary*, 87 C 6521, 1988 U.S. Dist. LEXIS 14074 (N.D. Ill. 1988), was a petition for habeas corpus. I concluded that an initial confession was involuntary but that a subsequent confession could be admitted in evidence. Judge Duff agreed with my first conclusion, but held that the later confession could not therefore be admitted. He therefore granted the writ of habeas corpus. 709 F. Supp. 837 (N.D. Ill. 1989). The Seventh Circuit affirmed, indicating that it agreed with my conclusion but that the state had forfeited its right to so argue by waiting until its reply brief to raise the ground for reversal. 895 F.2d 378 (7th Cir. 1990).

l. *Govas v. Chalmers*, 86 C 7834, reversed, 1990 U.S. Dist. LEXIS 16655 (N.D. Ill. 1990) (J. Williams), involved a motion to dismiss as a sanction for discovery abuse. I recommended that the motion be denied. Judge Williams granted the motion.

m. *Hammond Group v. Spalding & Evenflo Companies, Inc.*, 89 C 10098 (March 24, 1993) (J. Nordberg) (unreported), was a multicount complaint in which I recommended that defendants' motion for summary judgment be granted in part and denied in part. Judge Nordberg agreed with my recommendations on all but two counts, in which he concluded that a question of fact existed. (At trial, he granted defendants' motion for judgment at the close of plaintiff's evidence, concluding that I had been correct.)

n. *Bostic v. City of Chicago*, 1991 U.S. Dist. LEXIS 7345 (N.D. Ill. 1991), was a civil rights case alleging unlawful detention. I recommended that the parties' cross motions for summary judgment on various counts be granted in part and denied in part. Judge Nordberg agreed with my recommendations as to two

counts but disagreed on others, in part because of an intervening Supreme Court decision.

o. *Messmer v. McKesson Corp.*, 91 C 6205, reversed, 1992 U.S. Dist. LEXIS 12368 (N.D. Ill. 1992) (J. Lindberg), involved a discovery dispute. I denied defendant's motion to take certain depositions on the basis of a prior decision by Judge Lindberg. Judge Lindberg subsequently decided the depositions should be allowed.

p. *Boggs, Mary J. v. Charles S. Adams*, 91 C 2719, 1993 U.S. Dist. LEXIS 11316 (N.D. Ill. 1993), was a personal injury action involving alleged childhood sexual abuse. I recommended that defendant's motion for summary judgment on the issue of the statute of limitations be denied. Judge Norgle reversed, concluding that Illinois' statute of repose barred the claim. 838 F. Supp. 1293 (N.D. Ill. 1993).

q. *Cusumano, et al. v. Mapco Gas Products Inc., et al.*, 90 C 7161, (N.D. Ill. 1994) (unreported), involved a motion to file a third-party complaint. I recommended that leave be denied because the complaint would be barred by the statute of limitations. 1993 U.S. Dist. LEXIS 15339 (N.D. Ill. 1993). Judge Norgle agreed with my substantive analysis but said that the third party defendant might waive the defense and therefore allowed the defendant to file the complaint.

r. *McMillan v. City of Chicago*, 1993 U.S. Dist. LEXIS 15867 (N.D. Ill. 1993), involved a motion to dismiss. I recommended that the motion be denied in part. Judge Zagel dismissed the claims.

s. *O'Hara v. City of Naperville*, 1993 U.S. Dist. LEXIS (N.D. Ill. 1993), was a motion to dismiss a civil rights complaint involving an alleged unlawful search and seizure. I recommended that the motion be granted in part. Judge Lindberg agreed in part but concluded that the evidence on the motion did not show as a matter of law that the police officer was entitled to qualified immunity.

t. *United States v. Conway*, 1993 U.S. Dist. LEXIS 6731 (N.D. Ill. 1993), I ordered a defendant released on bond. The district judge revoked his bond.

u. *Joseph J. Legat Architects, P.C. v. United States Development Corp., et al.*, 1991 U.S. Dist. LEXIS 3358 (N.D. Ill. 1991), was a copyright and trademark action over copied architectural plans. Judge Alesia disagreed with certain of my recommendations with respect to summary judgment.

v. *AIC Security Investigations, Ltd. v. General Service Employees Union, Local No. 73*, 1990 U.S. Dist. LEXIS 13392 (N.D. Ill. 1990), involved the interpretation of a collective bargaining agreement and a dispute as to whether an agreement covered certain employees. Judge Alesia concluded that

an NLRB determination, which he noted had not been brought before me since defendant had not opposed the motion for summary judgment until it came before Judge Alesia on review, was conclusive.

w. *Taylor v. Castaneda*, 740 F. Supp. 542 (N.D. Ill. 1990), was a motion to dismiss the city from a civil rights excessive force case. The complaint alleged that two police officers responding to a possible domestic disturbance shot and killed the plaintiff's son when he ran away. I recommended that the City's motion be denied. Judge Alesia disagreed.

x. *Sims v. Bowen*, 666 F. Supp. 1141 (N.D. Ill. 1987), was a review of denial of Social Security benefits. I recommended that the case be remanded to the Secretary for further consideration. Judge Aspen agreed but also held that the ALJ's findings regarding pain were not supported by substantial evidence, contrary to my conclusion.

y. *Webb v. Bowen*, No. 84 C 1113 (N.D. Ill. 1986), was a Social Security benefits review proceeding. Judge Grady concluded, contrary to my finding, that plaintiff could not perform her former work.

z. *Brainard & Bridges v. Weingeroff Enterprise, Inc.*, No. 85 C 493 (N.D. Ill. 1986), was an appeal of a decision in which I found a waiver of attorney-client privilege. Judge Grady agreed with my analysis of the arguments put forth by the parties but concluded that the attorney might not have had authority to waive the privilege on behalf of his client.

aa. *Folstad v. Illinois State Board of Investment*, 1989 WL 13167 (N.D. Ill. 1989), was an appeal on objections to an attorney's fee award. Judge Plunkett held that certain fees would not be allowed.

bb. *United States v. Faulkner*, 119 F.R.D. 390 (N.D. Ill. 1988), involved the question whether the Government could obtain prejudgment interest when it had been omitted from a judgment, pursuant to Rule 60, Fed. R. Civ. P. Judge Bua held that it could, contrary to my recommendation.

cc. *International Brotherhood of Boilermakers v. Local Lodge 714*, 845 F.2d 687 (7th Cir. 1988), was an action seeking to enforce a trusteeship against a local affiliate of an international union. I recommended that the International's motion for a preliminary injunction be granted. Judge Bua agreed. 663 F. Supp. 687 (N.D. Ill. 1988). The Seventh Circuit vacated and remanded for a determination of whether the local retained sufficient members that it was not automatically disbanded.

(3) a. *Parsons v. Aguirre*, 123 F.R.D. 293 (N.D. Ill. 1988), opinion adopted by Judge Nordberg, 123 F.R.D. 293 (N.D. Ill. 1988).

b. *Patel v. United States*, 1992 U.S. Dist. LEXIS 560 (N.D. Ill. 1992).

c. *Dickerson v. City of Chicago*, 1992 U.S. Dist. LEXIS 1771 (N.D. Ill. 1992).

d. *Ademi v. Moyer*, 1989 U.S. Dist. LEXIS 5953 (N.D. Ill. 1989).

e. *Libby v. South Interconference Ass'n.*, 87 C 7499 (N.D. Ill. 1987) (unreported).

f. *Nelson v. Streeter*, 1992 U.S. Dist LEXIS 5443 (N.D. Ill. 1992), adopted, 1992 U.S. Dist. LEXIS 11936 (N.D. Ill. 1992), *aff'd*, 16 F.3d 145 (7th Cir. 1994).

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**ANSWER:** None.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;
  2. whether you practiced alone, and if so, the addresses and dates;
  3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**ANSWER:** 1972-1973: Law Clerk, U.S. Circuit Judge Robert Sprecher, United States Court of Appeals for the Seventh Circuit, Chicago, Illinois.

1973: Lecturer, Northwestern University School of Law.

1973-1974: Associate, Morrison & Foerster, 345 California Street, San Francisco, California.



1974-1979: Associate and Partner, Devoe, Devoe, Shadur & Krupp (now known as Miller, Shakman, Hamilton & Kurtzon), 208 South LaSalle Street, Chicago, Illinois.

1978-1980: Visiting Professor, University of California at Davis, School of Law, Davis, California.

1980-1983: Partner, Coin, Crowley & Nord, Chicago, Illinois. (The firm dissolved in 1983.)

1983-1985: Sole Practitioner, Chicago, Illinois.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

**ANSWER:** My practice was primarily litigation, most of which was in federal court. Areas in which I litigated included antitrust, patent, securities, trademark, pension rights, ERISA, labor, environmental, libel and contract law. My former clients included both corporations and individuals.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

**ANSWER:** Throughout my time in practice, I appeared in court frequently.

2. What percentage of these appearances was in:
- (a) federal courts; - 80%
  - (b) state courts of record; - 20%
  - (c) other courts.
3. What percentage of your litigation was:
- (a) civil; - 99%
  - (b) criminal - 1%.
4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.



**ANSWER:** I tried two cases to verdict as sole counsel, associated in another case tried to verdict, and tried several arbitrations or administrative proceedings.

5. What percentage of these trials was:

- (a) jury; - 0%
- (b) non-jury - 100%.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

**ANSWER:** (1) *Erickson v. Republican Party of Kankakee County*, No. 83-2320 (C.D. Ill. 1983), in which I obtained a consent decree against discrimination in employment on the basis of political affiliation. I was the principal attorney for plaintiff. The defense attorney was James R. Schirott, 105 East Irving Park Road, P.O. Box 247, Itasca, Illinois, (708) 773-8500. The judge was Judge Baker.

(2) *Newcor v. Morley*, No. 80 C 3119 (N.D. Ill. 1982). I represented an individual defendant in a trade-secret/alleged breach of fiduciary duty case. The case ultimately settled. I wrote briefs, argued motions, and took depositions. The judge was Judge Roszkowski. Opposing counsel was Stephen A. Gorman, 30 North LaSalle Street, Chicago, Illinois, (312) 368-8330.

(3) *Johnson v. Nationwide Industries, Inc.*, 450 F. Supp. 949 (N.D. Ill. 1978), was an antitrust action involving an alleged tying arrangement before Judge Frank McGarr. I worked on various motions. Judge McGarr. Opposing counsel was William D. Maddux, now Judge, Circuit court of Cook County, 2406 Richard J. Daley Center, Chicago, Illinois, (312) 443-6020.

(4) *Penthouse v. Playboy Enterprises*, 86 F.R.D. 396 (S.D. N.Y. 1980). I was one of the attorneys representing Playboy Enterprises in a libel action. (I left to teach soon after the trial was completed.) I wrote briefs and assisted at the trial of the case. The most significant feature of the case was a decision by Judge Griesa to dismiss the case as a sanction against misconduct by Penthouse counsel. The decision was affirmed on appeal, 663 F.2d 371 (2d Cir. 1981). Norman Roy Grutman (now deceased) was opposing counsel. David J. Krupp, 208 South LaSalle Street, Chicago, Illinois, (312) 263-3700, was lead counsel for defendant.

(5) *Unit Crane & Shovel Corp. v. Caine Steel Co.*, No. 73 C 2050 (N.D. Ill. 1976). This was a breach of contract action under diversity jurisdiction before then District Judge Joel Flaum. It settled just before trial. I conducted discovery and worked on preparation of the pretrial order, jury instructions, motions, trial briefs and prepared witnesses for trial. Stephen C. Shamberg, 500 West Madison Street, Chicago, Illinois, (312) 715-5743, was opposing counsel.

(6) *Board of Education of Township High School District No. 211 v. Kusper*, 92 Ill.2d 333, 442 N.E.2d 179 (1982). I wrote the briefs in the appeal to the Illinois Supreme Court in a case involving the interpretation of Illinois' "Truth In Taxation Act." I represented the plaintiff. The issue was whether a term in an Illinois statute included certain money. Defendant prevailed. Lead counsel was John H. Hager, 55 West Monroe Street, Chicago, Illinois, (312) 236-8088. Opposing counsel was Thomas J. McNulty, 77 West Wacker Drive, Chicago, Illinois, (312) 634-5061.

(7) *Seminario v. Witherell*, No. 83 C 3945 (N.D. Ill. 1983). Judge Bua. This case involved an alleged violation of the consent decree in *Shakman v. Democratic Organization of Cook County*. I represented the plaintiff. The case was tried to verdict. The defendant prevailed. Opposing counsel was Donald Hubert, 188 West Randolph Street, Chicago, Illinois, (312) 368-0213.

(8) *Heinrichs v. Kelly*, No. 83 C 3946 (N.D. Ill. 1983). Judge Bua. This case involved an alleged violation of the consent decree in *Shakman v. Democratic Organization of Cook County*. I represented the plaintiff, a part-time park district employee who alleged that he could not

get hired as a full-time employee due to the fact that he did not have political sponsorship. The case settled. Opposing counsel was Jerome H. Torshen, 105 West Adams Street, Chicago, Illinois, (312) 372-9282.

(9) *Gordon, et al. v. Profit Sharing Plan and Trust of Hinsdale Women's Clinic*, No. 79 C 2104 (N.D. Ill. 1983). I represented one of the defendants in a case in which plaintiff physician charged his former partners with violations of ERISA, breach of contract, breach of fiduciary duty and fraud. I wrote briefs, conducted discovery and took depositions. The case was eventually settled. Judge Flaum presided. Co-counsel was Timothy C. Klenk, 150 North Michigan Avenue, Chicago, Illinois, (312) 558-1000. Opposing counsel was George W. Groble, 33 West Jackson Boulevard, Chicago, Illinois, (312) 939-5858.

(10) *Jones v. Roudebush*, No. 75 C 1548 (N.D. Ill. 1975). I represented plaintiff in an action in which she sought reversal of an administrative decision by the Civil Service Commission that had refused to reinstate her to her employment with a Veterans Administration hospital. Plaintiff prevailed on summary judgment before Judge McLaren. Opposing counsel was Martin Lowery, 77 Drendel Lane, Naperville, Illinois, (708) 305-8791.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

ANSWER: I have been a federal magistrate judge since 1985. During this time, I have tried many cases in most areas of federal law, managed discovery and written opinions in hundreds of federal cases, and conducted preliminary proceedings in felony cases. I have been a member of the Civil Justice Reform Act Committee for the Northern District of Illinois, participating in discussions and helping to create a plan to reduce the backlog of cases in this district. I am a member of the Advisory Group to the Magistrate Judges Division of the Administrative Office, in which I participate in planning for utilization of magistrate judges in ways that will maximize their usefulness to the federal court system. This past year I organized

a settlement workshop for all the magistrate judges in the Seventh Circuit with the purpose of improving all of our skills in this area.

I also had significant judicial experience as a practicing attorney, serving as a special master and trying between 100 and 150 mini-trials in a complex Title VII class action involving former flight attendants who contended they had been forced to leave their positions because of an airline's "no-marriage" rule.

My legal writing has included two significant articles on *scienter* under section 10(b) of the 1934 Securities Exchange Act. The articles have been cited by most of the federal courts of appeal as well as the Supreme Court, which in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976), concurred with my conclusion.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**ANSWER:** I receive a small income (this past year, approximately \$3,000) from undivided mineral rights inherited from my grandfather and managed by my uncle. I have no part in the management of these interests.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**ANSWER:** I examine the pleadings when a case comes before me to determine whether either the parties or attorneys could result in a conflict of interest or appearance of such a conflict. I will continue to do so. I know of no categories of litigation or financial arrangements that would be likely to present a conflict of interest during my initial service in the position to which I hope to be confirmed. If presented with a conflict or potential conflict, I would of course act in accordance with the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**ANSWER:** No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)



**ANSWER:** I have attached my financial disclosure report dated August 19, 1994 as Appendix 3.

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

**ANSWER:** I have attached the financial net worth statement as Appendix 4.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**ANSWER:** I acted as a poll watcher in Harold Washington's first campaign for mayor of the City of Chicago in 1983. I handed out literature and acted as a precinct captain in William Singer's first campaign for alderman in Chicago in 1968.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**ANSWER:** I currently am a volunteer at Deborah's Place in Chicago, a shelter for homeless women. Once a month I help make meals and serve and talk to the women who come there. I am also currently a tutor at Jobs for Youth in Chicago, where I help prepare high school dropouts to take the GED examination. My husband and I have committed to become sponsors of a high school student in Chicago through LINK Unlimited, an interracial organization dedicated to helping to motivate minority students to fulfill their potential to finish high school and continue through the University level, through the personal support and financial aid of sponsors and the organization. In the past I have attempted to encourage people considering the adoption of children of special needs through discussion of personal experiences. I have also contributed clothing, toys and money to DePaul Settlement House, which helps poor working people, the homeless and the elderly.

Throughout my legal career I have been involved in pro bono work. That has included representing a small union that was without funds and representing individuals. During my early years out of law school, I was actively involved in the Chicago Council of Lawyers, in which I eventually served as president. The Council is a bar association whose purpose is to work for the improvement of the bar and judiciary and to serve the community. During the year that I was president, the Council received the ABA Harrison Tweed Award for giving legal aid to indigent citizens of Cook County. More recently I have been active in and was president of the Chicago Chapter of the Federal Bar Association. While I was president, the Chicago Chapter sponsored a three day conference for all the Article III minority members of the federal judiciary, called "Just the Beginning." The conference explored the history of African-American members in the judiciary, and celebrated the contributions of minorities to the federal judiciary.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

ANSWER: No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

ANSWER: Yes. I was recommended to Senators Paul Simon and Carol Moseley-Braun by the Merit Commission appointed by them to select possible candidates for the district court in the Northern District of Illinois. The Commission was announced in early 1993. Pursuant to the Commission's instructions, I filled out an application and submitted it, together with materials requested by the Commission. Thereafter, following an investigation, the Commission interviewed me and others. In June, 1993, I was one of ten persons whose names were submitted to the senators from Illinois. Following this announcement, various bar associations also conducted a review of my qualifications. I interviewed with each of them. I was interviewed for the position by Senator Simon in July, 1993. Senator Simon and Senator Moseley-Braun submitted my name to the President in June, 1994. I was interviewed by the Department of Justice on July 8, 1994, by the Federal Bureau of Investigation on July 18, 1994, and the American Bar Association on July 26, 1994.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

ANSWER: No.

5. Please discuss your views on the following criticism involving "judicial activism."

Some of the characteristics of this "Judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**ANSWER:** Judges are required to determine the law applicable to the case before them and to apply that law to the facts of the specific case. A trial judge must pay careful attention to the facts and must decide the specific case before him or her. Although in a particular case a plaintiff may represent a class of individuals to whom a ruling may be applicable, a judge should not seek to use an individual for this purpose. Furthermore, jurisdictional requirements may not be ignored. Finally, judges and the federal courts as a whole have neither the time nor the expertise to take over broad administrative responsibilities over institutions. If such a burden became necessary in order to vindicate the rights of a particular litigant a judge could not refuse the responsibility on this basis, but it should be a rare case in which such action occurs.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Bucklo, Elaine E.	2. Court or Organization  Northern District of Illinois	3. Date of Report  8/19/94
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)  U.S. District Judge	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>8/16/94</u> ___ Initial ___ Annual ___ Final	6. Reporting Period  1/1/94 - 8/19/94
7. Chambers or Office Address 219 South Dearborn Street Suite 1764 Chicago, IL 60604	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** *The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.*

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

☐ NONE (No reportable positions)

Secretary (1/1/94 - 7/16/94)  
Treasurer (7/16/94 - present) Federal Magistrate Judges Association  
Director (6/9/94 - present) Women's Bar Association of Illinois

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

☒ NONE (No reportable agreements)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)

☐ NONE (No reportable non-investment income)

1. \_\_\_\_\_ Grant Hospital(S), University Hospital(S)  
and self-employed therapist (S) \$ \_\_\_\_\_

2. \_\_\_\_\_ \$ \_\_\_\_\_

3. \_\_\_\_\_ \$ \_\_\_\_\_

4. \_\_\_\_\_ \$ \_\_\_\_\_

5. \_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_ \$ \_\_\_\_\_



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Bucklo, Elaine E.

Date of Report

8/19/94

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

☒ X

NONE (No such reportable reimbursements or gifts)

1

2

3

4

5

6

7

8

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

☒ X

NONE (No such reportable gifts)

1

2

3

4

\$

\$

\$

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

☒ X

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Bucklo, Elaine E.

Date of Report

8/19/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Amst. Code (A-E)	Type (a-e), div., rent or int. (f-h)	Value, Code (J-P)	Value Method, Code (Q-W)	(1) Type (e-g), buy, sell, margin, redemption	(2) Date: Month/Day	(3) Value, Code (J-P)	(4) Gain, Code (A-E)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
Harris Trust & Savings Bank 111 W. Monroe, Chicago, IL 60603	A	int.	J	T					
Mineral interests	C	rent & roy.	J	W					
1									
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes:	A=\$1,000 or less (See Col. B1 & D4)	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 K=\$15,001 to \$50,000	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000	D=\$5,001 to \$15,000 H=More than \$1,000,000 M=\$100,001 to \$250,000
2 Value Codes:	J=\$15,000 or less (See Col. C1 & D3)	R=\$250,001 to \$500,000	O=\$500,001 to \$1,000,000	P=More than \$1,000,000
3 Value Method Codes:	Q=Appraisal (See Col. C2)	U=Book Value	R=Cost (real estate only) V=Other	S=Assessment W=Estimated
				T=Cash/Market

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Bucklo, Elaine E.

Date of Report

8/19/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

---

---

---

---

---

---

---

---

---

---

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date 8/19/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

# FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	12	000 00	Notes payable to banks—secured	230	000 00
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule			Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	8	000 00
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule		
Real estate owned—add schedule	500	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—Name(s):		
Autos and other personal property	22	000 00	Thrift Savings Loan	6	000 00
Cash value—life insurance			Volvo Finance	18	824 00
Other assets—Name(s):			School Tuition	12	000 00
Thrift Savings Plan	36	898 00			
Mineral Interests	7	500 00			
IRA's	7	650 00			
			Total Liabilities	273	824 00
			Net worth	311	224 00
Total assets	585	048 00	Total liabilities and net worth	585	048 00
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	None		Are any assets pledged? (Add schedule.)	No	
On leases or contracts			Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

**UNITED STATES SENATE**  
Committee on the Judiciary

QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Robert W. Gettleman  
Bob Gettleman

2. Address: List current place of residence and office address(es).

Home: 2332 Ridge Avenue, Evanston, IL 60201.

Office: 30 N. LaSalle St., Suite 2900, Chicago, IL 60602.

3. Date and place of birth.

May 5, 1943, Atlantic City, New Jersey.

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Joyce R. Gettleman, who is employed part-time as a social worker for the North Suburban Special Education District, Highland Park, Illinois. Joyce is also self-employed as a private psychotherapist. Address: 708 Church Street, Suite 221, Evanston, Illinois 60201,

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of Florida	1961-1963	(No degree)
Boston University	1963-1965	Finance, B.S.B.A. Cum Laude 1965
Northwestern University School of Law	1965-1968	J.D. Cum Laude



1968

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.
- |   |   |
|---|---|
| June-August, 1965<br>and 1966:          | Pan American Marble & Stone Co.<br>6825 N.W. 25th Street<br>Miami, Florida 33166<br>Laborer and salesman  |
| June-August, 1967:                      | Metropolitan Sanitary District of<br>Greater Chicago<br>100 East Erie Street<br>Chicago, Illinois 60611<br>Law Clerk  |
| June-August, 1968:                      | Staff Law Clerk, U.S. Court of<br>Appeals for the Seventh Circuit,<br>219 South Dearborn Street, Chicago,<br>Illinois 60604 (indirectly<br>supervised by Chief Judge Latham<br>Castle). |
| August, 1968 through<br>December, 1969: | Law Clerk to Chief Judge Latham<br>Castle, U.S. Court of Appeals for<br>the Seventh Circuit, 219 South<br>Dearborn Street, Chicago, Illinois<br>60604.                                  |
| January, 1970 through<br>June, 1970:    | Law Clerk to Chief Judge Luther<br>Swygert, U.S. Court of Appeals for<br>the Seventh Circuit, 219 South<br>Dearborn Street, Chicago, Illinois<br>60604.                                 |
| July, 1970-Present                      | D'Ancona & Pflaum<br>Suite 2900<br>30 N. LaSalle Street<br>Chicago, IL 60602<br>General Civil Litigation<br>Associate (7/70-12/73) and<br>Partner (1/74-present)                        |
| 1991-Present                            | Access Living of Metropolitan<br>Chicago<br>310 S. Peoria, Suite 201<br>Chicago, IL 60607<br>(Board Member)   |

## 1973-Present

John Howard Association  
67 East Madison Street  
Suite 1416  
Chicago, IL 60603  
(Board Member, 1973-1993;  
President, 1978-1981; Advisory  
Council 1993-present)

Bolar & Co., 30 North LaSalle  
Street,  
Suite 2900, Chicago, Illinois 60602  
(General partnership with my  
brother, Lawrence Gettleman, in  
which we hold equal interests in  
passive investments in limited  
partnerships and a stock portfolio  
at Dean, Witter.

## 1973-1978

American Civil Liberties Union  
203 N. LaSalle St., Suite 1405  
Chicago, IL 60601  
(Board Member)

DP Partners. (General investment  
partnership with present and former  
colleagues at D'Ancona & Pflaum,  
which owns seven condominium units  
in Philadelphia, PA.

D'Ancona 222 Associates. (General  
investment partnership with  
colleagues at D'Ancona & Pflaum,  
which formerly owned an interest in  
an office building in Chicago and  
currently is collecting the  
proceeds of the sale of that  
building.

## Limited partnership interests in:

- (i) Bob Jo Investments
- (ii) 3839-45 Greenview Ltd.  
Partnership
- (iii) D'Ancona & Pflaum/231  
South State Limited  
Partnership

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

- a. Law School (Northwestern): graduated cum laude.
- b. College (Boston University): graduated cum laude.
- c. Not-for-profit and pro bono: elected president of John Howard Association (1978-1981), chairman of Illinois Guardianship & Advocacy Commission (1986-1988).
- d. Fellow of American Bar Foundation (1985 - present).

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Member of American Bar Association, Illinois State Bar Association, Chicago Bar Association, Bar Association of the Seventh Federal Circuit, Chicago Council of Lawyers. Former member of Bar Association of the Seventh Federal Circuit.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

1991 - Present

Access Living of Metropolitan Chicago (An Independent Living Center supported by public and private funding, providing direct services and advocacy on behalf of the disabled community of Chicago) - Board member; member of Executive Committee; Chairman of Program and Advocacy Committee.

1973 - Present

John Howard Association (state-wide prison reform organization) - Board Member

(1973 - 1993), President  
(1978-1981), member of  
Advisory Council (1993-  
present).

Each of these organizations engages in lobbying, although I am not and have not been involved in those activities. I belong to no other organizations.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Member of the Bars of the Supreme Court of Illinois (since 1968), the United States Supreme Court (since 1973), the United States Court of Appeals for the Seventh Circuit (since 1968), United States District Court for the Northern District of Illinois (since 1968), and the United States District Court for the Eastern District of Wisconsin (since 1972).

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Heinz, Gettleman and Seeskin, "Legislative Politics And The Criminal Law," 64 Northwestern University Law Review 277 (1969).

Gettleman and Hodgman, "Judicial Construction of Charitable Bequests: Theory Vs. Practice," 53 Chicago Kent Law Review 659 (1977).

Gettleman and Snyder, Discovery Chapter of Illinois Institute for Continuing Legal Education Handbook on Federal Civil Practice (1981-1992).  
Attached as Exhibit I(12).

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent; last exam January 26, 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

- a. Have you ever held public office other than judicial office? If so, give details, including the office involved, whether elected or appointed, and the length of your service, giving dates.

- (i) Commissioner, Illinois Guardianship & Advocacy Commission, 421 E. Capitol Avenue, Suite 205, Springfield, Illinois 62701. (Commissioners are appointed by the Governor and confirmed by the Illinois Senate; I was appointed and confirmed three times; the Commission oversees delivery of mental health services and provides guardianship services to more than 7,000 wards) - Commissioner (1984-1993), Treasurer (1984), Vice Chairman (1985), Chairman (1986-1988).
- (ii) Commissioner, Governor's Commission to Revise Mental Health Code of Illinois (Appointed by the Governor, this executive commission drafted the Illinois Mental Health Code and major guardianship revisions to the Probate Act.) - Commissioner and Chairman of Committee on Developmental Disabilities and Committee on Individual Rights. (1973-1977.)



- (iii) **Municipal Officers Election Board (1985).**  
 (Appointed by Chief Judge Harry B. Comerford  
 of the Circuit Court of Cook County, pursuant  
 to Ill.Rev.Stat., ch. 46 §10-9, to hear  
 election contests for Village of Lyons).

17. Legal Career:

- a. Describe chronologically your law practice and  
 experience after graduation from law school  
 including:

- (1) whether you served as clerk to a judge,  
 and if so, the name of the judge, the  
 court, and the dates of the period you  
 were a clerk;

June-August, 1968: Staff Law Clerk, U.S. Court of  
 Appeals for the Seventh Circuit, 219 South  
 Dearborn Street, Chicago, Illinois 60604  
 (indirectly supervised by Chief Judge Latham  
 Castle).

August, 1968 through December, 1969: Law Clerk to  
 Chief Judge Latham Castle, U.S. Court of Appeals  
 for the Seventh Circuit, 219 South Dearborn  
 Street, Chicago, Illinois 60604.

January, 1970 through June, 1970: Law Clerk to  
 Chief Judge Luther Swygert, U.S. Court of Appeals  
 for the Seventh Circuit, 219 South Dearborn  
 Street, Chicago, Illinois 60604.

- (2) whether you practiced alone, and if so,  
 the addresses and dates;

I have never been a sole practitioner.

- (3) the dates, names and addresses of law  
 firms or offices, companies or  
 governmental agencies with which you  
 have connected, and the nature of your  
 with each;

In July, 1970, I joined D'Ancona & Pflaum (then  
 known as D'Ancona, Pflaum, Wyatt & Riskind) as an  
 associate. I became a partner on January 1, 1974,  
 and have practiced with the firm continuously  
 since then, specializing in civil litigation.

- b. (1) What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
- (2) Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have always specialized in general civil litigation.

My typical clients are business enterprises represented by D'Ancona & Pflaum. They include Barton, Inc. (alcoholic beverages), Wheels, Inc. and related entities (automobile fleet leasing and retailing), Greco Contractors, Inc. (construction), Joseph Giddan & Sons (real estate developers), RREEF Funds (institutional real estate development and management), American Cancer Society, Illinois Division, Inc., and the Jewish United Fund of Metropolitan Chicago, to name a few. Although I do not consider myself a specialist in any particular subject matter, I have handled major cases in the areas of wills, trademark and copyright, securities fraud, real estate and land use, trusts and estates, employment contracts, and fiduciary obligations. I also represent two professional organizations (the Institute for Psychoanalysis of Chicago and Society of Professional Archeologists) in connection with internal ethical proceedings.

- c. (1) Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I appear in court frequently to: present and argue motions; present status reports; attend discovery and settlement pretrial conferences; prosecute and defend injunction actions; try cases.

- (2) What percentage of these appearances was in:
- (a) federal courts;
  - (b) state courts of record;
  - (c) other courts.

50% federal, 50% state.

- (3) What percentage of your litigation was:
- (a) civil;
  - (b) criminal.

99% civil; 1% criminal.

- (4) State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Chief Counsel:<sup>1</sup> 16  
Associate Counsel: 9

- (5) What percentage of these trials was:
- (a) jury;
  - (b) non-jury.

8% Jury; 92% non-jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and

---

<sup>1</sup>These include six injunction trials, but do not include minor hearings (e.g., building court and quasi-criminal matters). In addition, I have tried a number of major arbitrations under strict rules of evidence, and have handled contested hearings before the Illinois Human Rights Commission, the National Labor Relations Board, N.A.S.D., and the Chicago Board of Election Commissioners.

- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Nachman Corp. v. Pension Benefit, 446 U.S. 359 (1980) (opinion by Justice Stevens). This was the first ERISA case heard by the Supreme Court, and involved the issue of withdrawal liability during the phase-in period of the statutory scheme. Our client, Nachman Corp., had terminated the pension plan at a plant that was closed prior to the date on which ERISA required employers to guarantee all benefits, both forfeitable and "non-forfeitable." Because the Nachman plan provided that unfunded benefits would be lost upon plan termination, the issue was whether such benefits were "non-forfeitable" under the statute. I argued the case for the plaintiff-petitioners and was the principal author of the briefs. Although we lost (5-4), the case was a watershed for the liberal interpretation of ERISA, and the beginning of my sub-specialty in this area. (Co-counsel: Joel D. Rubin and H. Debra Levin of D'Ancona & Pflaum; opposing counsel: Henry Rose (then General Counsel of the P.B.G.C.), Epstein, Becker & Green, 1227 25th Street N.W., Washington, D.C. 20037, (202) 861-0900.) (Dates of representation: 1977-1980.)

2. Chicago Board Options Exchange v. Connecticut General, 713 F.2d 254 (1983) (opinion by Judge Pell). The defendant insurance carrier attempted to amend unilaterally a group annuity contract in order to prevent withdrawal by participants, such as our client. This case helped to change the nature of insurers' responsibilities under ERISA, by upholding our position that to the extent a carrier exercised discretion over an annuity policy, that carrier was an ERISA fiduciary. I was lead counsel for the successful plaintiff. (Co-counsel: Lawrence J. Moss of D'Ancona & Pflaum; opposing counsel: James Otis and Robert A. Creamer, Keck, Mahin & Cate, 8300 Sears Tower, Chicago, Illinois 60606, (312) 876-3400.) (Dates of representation: 1981-1983.)

3. Rowe v. Maremont, 850 F.2d 1226 (7th Cir. 1988) (opinion by Judge Manion) (trial in mid-1983 and early 1984, Judge Susan Getzendanner). Our clients, the plaintiffs, sold a block of stock in a publicly traded company to the defendant which,

contrary to its representations, intended to make a tender offer for the entire company. The Court held that the purchaser violated Rule 10b(5) by withholding information about the intended tender offer. The court also affirmed damages based on the value of the stock measured at a reasonable time after the purchase, rather than full disgorgement of profits. I represented the successful plaintiffs at trial and on appeal. (Co-counsel, Jean M. Snyder, Three First National Plaza, Suite 3600, Chicago, Illinois 60602, (312) 368-0600; opposing counsel: Bernard Mussbaum, Sonnenschein, Carlin, Nath & Rosenthal, 8000 Sears Tower, Chicago, Illinois 60606, (312) 876-8000.) (Dates of representation: 1977-1988.)

4. Gracen v. Bradford Exchange, 698 F.2d 300 (7th Cir. 1983). We represented the successful defendants in this important copyright case, in which the plaintiff had copyrighted paintings of characters and scenes from the "Wizzard of Oz" motion picture. Our clients, MGM and a commemorative plate manufacturer, the owner and licensee, respectively, of the copyright on the motion picture, successfully argued that the plaintiff's copyrights were invalid because they too closely represented the underlying work. In an opinion that has been discussed in virtually all the major copyright treatises, including Nimmer on Copyrights, the court of appeals defined the limits of originality in derivative copyrights. I was lead counsel and principal author of the briefs at the trial and appellate levels. (Co-counsel: Arthur Don of D'Ancona & Pflaum; opposing counsel: Charles Rowe, retired, current address unknown.) (Dates of representation: 1980-1983.)

5. Giddan v. Northbrook, 151 Ill. App. 2d 537 (1st Dist. 1986) (opinion by Justice White). We represented the contract purchaser of commercial real estate adjoining land owned by the seller. The contract required the parties to execute "recordable cross easements" over both parcels "to unify the plan for parking and ingress and egress. . . ." but did not specify the location of such easements. This is one of the few cases in which an Illinois court ordered specific performance of a commercial real estate contract where the parties failed to agree to an important term. I was lead counsel for the successful plaintiff on appeal. (Co-counsel:



Georgann Joseph, Dean Witter Discover & Co., 2500 Lake Cook Road, Riverwoods, Illinois 60015 (708) 405-1828, and Jack M. Siegel, Altheimer & Gray, 10 South Wacker Drive, Suite 4000, Chicago, Illinois 60606 (312) 715-4677; opposing counsel: Theodore A. Shapero and James Flesch, Rudnick & Wolfe, 203 North LaSalle Street, Chicago, Illinois 60601, (312) 368-4000.) (Dates of representation: 1985-present.)

6. Jones v. Chicago Transit Authority, et al., 1984 CP 48 (Illinois Human Rights Commission). Tried in the spring of 1986 (Chief Administrative Law Judge Patricia Patton). I was senior member of a team sponsored by the Chicago Lawyers Committee for Civil Rights Under Law representing the complainants. In this case, prosecuted long before the Americans With Disabilities Act, the Illinois Human Rights Commission held that the Illinois Human Rights Act required the Chicago Transit Authority ("CTA") and the Regional Transportation Authority to provide lift equipped buses as a "reasonable accommodation" to disabled riders. As a direct result of this case, a substantial portion of the CTA fleet had wheelchair lifts many years before that remedy would have been required by the ADA. A subsequent case that the same Lawyers Committee team handled before the Commission (Jones v. Metra) resulted in a settlement providing similar relief with respect to the Metra commuter rail system. (Co-counsel: Jeffrey T. Gilbert, Sachnoff & Weaver, Ltd., 30 South Wacker Drive, Suite 2900, Chicago, Illinois 60606, (312) 207-6489, Kathleen C. Yannias, Legal Center for Disability Rights, 208 South LaSalle Street, Suite 1330, Chicago, Illinois 60604 (312) 444-9484; opposing counsel: Barry Alberts, Schiff, Hardin & Waite, 7200 Sears Tower, Chicago, Illinois 60606, (312) 288-5611; and Hugh R. McCombs, Mayer Brown & Platt, 190 S. LaSalle Street, Chicago, Illinois 60603, (312) 701-7357. Opposing counsel in Metra case: Michael Schneiderman, Hopkins & Sutter, Three First National Plaza, Suite 4100, Chicago, Illinois 60602 (312) 558-6632.) (Dates of representation: 1985-present.)

7. Estate of Sol Goldstein; Jewish United Fund ("JUF") v. Estate, 92 P 9553 (Circuit Court of Cook County, Probate Division; Hon. Frank M. Siracusa). I tried this case to verdict in November, 1993. The decedent had made a series of

oral pledges to our client (JUF) for a number of years prior to his death, leaving a balance of \$666,600 in unpaid pledges. In a case of first impression, the court ruled that such oral pledges were enforceable. Besides presenting extensive evidence of the pledges, we overcame defenses based on the Dead Man's Act, the parol evidence rule, and alleged lack of consideration. This decision, which is currently on appeal, is very important to charities, like JUF, that rely on oral pledges to fund their activities. (Co-counsel: Bonnie S. Kartsman, Swidler & Berlin Chartered, 3000 K Street, N.E., Suite 300, Washington, DC 20007, 202-424-7742; opposing counsel: Paul D. Frenz, McBride Baker & Coles, 500 West Madison Street, Chicago, Illinois 60661 (312) 715-5704.) (Dates of representation: 1993-present.)

8. In re Tomlinson's Estate, 65 Ill. 2d 382, 359 N.E.2d 109, 3 Ill. Dec. 699 (1976) (opinion by Justice Barry). I was lead counsel for the American Cancer Society, the successful legatee in a will contest. The decedent had left her residuary estate to the "Cancer Research Fund," a name that did not describe any actual organization. We successfully argued that the doctrine of cy-pres should be applied to interpret the decedent's intention to benefit cancer research through the most prominent cancer research organization. The case is important because it clarified the law on misdesignation of names of charities in a will. I later co-authored a law review article about this case (Gettleman and Hodgman, "Judicial Construction of Charitable Bequests: Theory vs. Practice," 53 Chicago Kent Law Review 659 (1977)). (Co-counsel: David R. Hodgman, Schiff, Hardin & Waite, 7200 Sears Tower, Chicago, Illinois 60606 (312) 258-5714; opposing counsel: Richard N. Gentry, Behrends & Gentry, 700 River Valley Plaza, Peoria, Illinois 61629 (309) 676-0475.) (Dates of representation: 1974-1976.)

9. U.S. ex rel Robson v. Oliver, 470 F.2d 10 (7th Cir. 1972). (Opinion by Judge Rile.) I was lead counsel in this ACLU-sponsored appeal by a criminal defense attorney who was cited for contempt after the close of a trial of persons accused of violently protesting the draft during the Vietnam War. Our client had made several humorous remarks during the trial. The case is

important because, in reversing the contempt citations, it defined the limits of the district court's contempt power. (Co-counsel: Joel D. Rubin of D'Ancona & Pflaum; David A. Goldberger, Ohio State University, 1659 N. High Street, Columbus, Ohio 43210 (614) 422-6821; opposing counsel: James R. Thompson, then U.S. Attorney; currently at Winston & Strawn, 35 West Wacker Drive, Chicago, Illinois 60601 (312) 558-5600.) (Dates of representation: 1971-1972.)

10. In re Cannon Ball Industries Inc., BMC America, Inc., Debtors. (Cons.), Cannon Ball Industries Inc., and BMC America, Inc. v. Sequa Corporation, 155 B.R. 177 (N.D. Ill. 1993), Hon. Philip G. Reinhard). I was lead counsel for the successful defendant in this appeal from a bankruptcy ruling which held that payments by the debtor to my client were voidable preferences under the so-called "Deprizio Doctrine" announced by the Seventh Circuit in Levit v. Ingersoll Rand Fin. Corp., 874 F.2d 1186 (7th Cir. 1989). Under this doctrine, a creditor may be required to repay the bankruptcy estate if the debt on which the creditor received payment within a year of bankruptcy was guaranteed by an insider. In Cannon Ball, the insiders had guaranteed the first \$150,000 of a \$750,000 debt to our client, the creditor (Sequa Corporation). At the time of bankruptcy, \$400,000 of debt remained unpaid. During the year prior to bankruptcy, \$44,000 had been paid. The district court upheld our position that because the payments to our client did not reduce the actual exposure of the corporate insiders who had guaranteed the debt, Deprizio did not apply. This case has been cited in a number of bankruptcy law publications, including the Bankruptcy Law Letter, V. 13, p. 6 (July, 1993). (Co-counsel: Charles M. Thomson, Malk & Harris, 212 East Ohio Street, Suite 500, Chicago, Illinois 60611 (312) 280-0111; opposing counsel: David M. Neff, Jenner & Block, One IBM Plaza, Chicago, Illinois 60611 (312) 222-9350.) (Dates of representation: 1991-1993.)

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Ezra Webb, Inc. v. Barton Beers, Ltd. We represent Barton Beers, Ltd. ("Barton"), the importer of Corona Beer for the western and midwestern United States. In 1985, Barton terminated Ezra Webb ("Webb"), its master distributor for Southern California which then accounted for nearly 80% of Corona sales in the U.S. Webb initiated arbitration under its contract, claiming more than \$20 million in damages. The hearings took in excess of four weeks and resulted in a finding for our client. The case is significant because, (a) my opposing counsel and I chose to avoid what we considered to be cumbersome American Arbitration Association procedures and together chose a single arbitrator to hear the case, (b) we were able to get the entire case, including pre-hearing discovery, resolved in an expeditious and cost-effective manner, and (c) the experience demonstrated (to me, at least) that major litigation can be handled privately and quickly outside the judicial system.<sup>2</sup> (Arbitrator: Prof. Stephen B. Goldberg, Northwestern University School of Law, 357 East Chicago Avenue, Chicago, Illinois 60611 (312) 503-8426; opposing counsel: Aaron J. Kramer, Schiff, Hardin & Waite, 7200 Sears Tower, Chicago, Illinois 60606 (312) 258-5620).

Society of Professional Archeologists ("SOPA"). With the enactment of the National Historic Preservation Act of 1974, archeological surveys became required for publicly funded construction projects. Contract archeology became a new profession, and a dedicated group of archeologists formed SOPA to establish a Code of Ethics, Standards of Research Performance, and Grievance Procedures. Our law firm was deeply involved in drafting the latter, pursuant to which complaints may be filed and prosecuted against members of SOPA (all of whom are certified by a committee that examines their credentials). In the early 1980s, I began to represent the organization in the grievance process. In this capacity, I have, (a) helped to revise the Grievance Procedures to ensure fairness to all concerned, (b) consulted with the grievance coordinators whose job it is to handle complaints and decide whether to proceed, and (c) prosecuted four full due process hearings against archeologists accused of

---

<sup>2</sup>In a similar case by a terminated distributor several years later, my opponent insisted on following the AAA rules. This resulted in a panel of three arbitrators, rather than one, with attendant delays and expense. Nevertheless, the proceedings were far more efficient and economical than judicial litigation.



unethical conduct. This work has been extremely rewarding not just because of the interesting subject matter, but also because of the quality of the people and their mission to preserve the archeological record and usher a new profession into our society.<sup>3</sup> (SOPA leaders with whom I have worked: Dr. Charles E. Cleland, Department of Anthropology, Michigan State University, East Lansing, Michigan 48824 (517) 353-7861; Dr. Edward B. Jelks, Society of Professional Archeologists, 605 North School Street, Normal, Illinois 61761 (309) 452-1223; Dr. C. W. McGimsey, III, Arkansas Archeological Survey, P. O. Box 1249, University of Arkansas, Fayetteville, Arkansas 72702 (501) 575-3556; opposing counsel: Mary Elizabeth Galvan, 165 North 5th Street, Laramie, Wyoming 82070 (307) 745-7091; William Caietti, 2020 Hurley Way, Suite 180, Sacramento, California 95825 (916) 929-0257.

Goodwill Industries of Chicago and Cook County v. The Valspar Corporation and Howard Conant, et al., (N.D. Ill.; No. 89 C 5116). Our client, Howard Conant, donated a paint factory to Goodwill Industries in 1984. Prior thereto, The Valspar Corporation had leased and operated the factory on the site. Under Goodwill's ownership, the property deteriorated and was stripped and vandalized to the point it became an environmental danger. Goodwill, and later the Illinois Environmental Protection Agency (IEPA), sued Valspar and Conant under the Resource Conservation and Recovery Act of 1976 (RCRA). During years of intense litigation, which ultimately resulted in settlements with both Goodwill and IEPA, our client and Valspar (who were jointly and severally liable under the environmental laws) cooperated in the joint defense of the action, deferring the issue of their respective portions of the liability. After settling with the plaintiffs and having failed to settle the issue between the defendants, Valspar's attorney and I submitted the matter to arbitration with Endispute in Chicago. After several days of hearings, the arbitrator issued an award which has been honored by the parties. This matter was significant because: (a) by agreeing to arbitrate rather than litigate our differences, Valspar

---

<sup>3</sup>Coincidentally, several years ago I was asked to represent the Institute for Psychoanalysis of Chicago in handling ethical prosecutions. Although this referral came through my mental health contacts, my work with the Institute is more related to my representation of SOPA than to the work I did on the Commission to Revise the Mental Health Code or the Guardianship & Advocacy Commission.



and Conant were able to keep the resolution of their dispute private and were able to mount an effective joint defense; and (b) the cost and time expended to resolve the Valspar-Conant dispute were minuscule compared to judicial litigation. This experience confirmed to me the extraordinary advantages of alternative dispute resolution in resolving most commercial or business controversies. (Co-counsel: Michael J. Quinn of D'Ancona & Pflaum; arbitrator: Hon. Jacques F. Heilingoetter, Endispute, Inc., Three First National Plaza, Suite 200, 30 West Madison Street, Chicago, Illinois 60602 (312) 739-0200; opposing counsel: Leo G. Stern, Fredrikson & Byron, 1100 International Centre, 900 Second Avenue South, Minneapolis, Minnesota 55402 (612) 347-7000.)

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

## Sources:

## D'Ancona &amp; Pflaum Company-Partnership Interest

A)	Equity Payable over 2-1/2 years.	\$ 46,000
B)	KEOGH Plan Payable at retirement	\$459,881
C)	401(k) Payable at retirement	\$ 62,054

In the future I will receive the payout of my equity interest pursuant to the partnership agreement.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would have a conflict of interest with any client my firm represents or any entity in which I hold an investment interest, and would recuse myself from any case in which the client or entity was an interested party. I would ask my law firm for a printout of all current clients (along with individual principals and key employees) and clients we have represented in the five years preceding my appointment. I have few major direct investments that would pose a problem (e.g., Eduardo's Restaurants). In addition, I would recuse myself for a period of five years from any case in which a party is represented by any attorney with D'Ancona & Pflaum. In handling all conflicts or potential conflicts, I will faithfully follow the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**No.**

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**See Attachment II(4).**

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**See Attachment II(5).**

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**Burris for Governor (Illinois) 1994: Member of Steering Committee (honorary; no active role in campaign).**

**Abner J. Mikva for Congress (9th Congressional District, Illinois) 1972, 1974, 1976, 1978; precinct worker, lawyers poll-watching work.**

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find ~~some~~ time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

During my career I have spent approximately 15% of my working hours on pro bono cases, including litigation, advocacy and organizational work. I joined D'Ancona & Pflaum in 1970 because of this firm's reputation as being committed to public service as an integral part of private practice. I have not been disappointed.

Here is a summary of my major pro bono activities:

- Illinois Guardianship and Advocacy Commission (1984 - present): Commissioner and past chairman. I was appointed by the Governor and confirmed by the Illinois Senate three times. This agency's principal task is to serve as guardian of last resort to (currently) more than 7,000 adult wards (developmentally disabled, mentally ill and elderly infirm). The Commission also provides legal advocacy for the disabled and includes nine volunteer Human Rights Authorities throughout the state that investigate alleged problems in the delivery of services. The commissioners provide policy guidance, direct the activities of the 100 plus member staff, and lobby the General Assembly for support and relevant legislation. This commission meets once a month, usually in Chicago but several times a year downstate. As one of the few commissioners who was a lawyer, I concentrated on the legal tasks of the Commission's staff. In addition, since I had helped to draft the guardianship statute when I was on the Governor's Commission to Revise the Mental Health Code, I was able to provide guidance in dealing with guardianship as well.
- Accessible public transit litigation (1985 - 1992). I was privileged to be the senior member of a legal team sponsored by the Chicago Lawyers Committee for Civil Rights Under Law in litigation against the Chicago Transit Authority, Metra, and the Regional Transportation Authority. These cases were prosecuted in the Illinois Human Rights Commission under the Illinois Human Rights Act. The first case (Jones v. CTA) was

tried before the late Chief Administrative Law Judge Patricia Patton on the issue of liability. After a favorable, landmark ruling on liability by Judge Patton, the parties settled the case by a consent decree that compelled the CTA to provide wheelchair lifts on a minimum of one-third of its bus fleet, in addition to adequate paratransit services. This was long before passage of the ADA, and resulted in accessible buses in Chicago long before ADA would have required such relief. The second case (Jones v. Metra) was settled without trial by a consent decree under which the Chicago area commuter rail system will be the most accessible in the country.

- Access Living of Metropolitan Chicago (1993-present): As Chairman of the Program and Advocacy Committee and a member of the Executive Committee, I am currently working with this nationally known disability rights organization to develop an enforcement program designed to promote compliance with the Americans With Disabilities Act, the Environmental Barriers Act, the Illinois Human Rights Act, and similar legislation. We hope to accomplish this by networking with other disability organizations and the legal community. Activities will include public education, testing, training of volunteer attorneys, and impact litigation. My board and committee work for Access Living takes approximately ten hours a month.
- John Howard Association (1973 - present); board member and past president. Although my time commitment to disability rights causes has decreased my activity in this highly regarded prison reform group, I devoted a great deal of time during the 1970's and 1980's. In addition to organizational work, this included litigation, writing amicus curiae briefs, and public advocacy.
- Governor's Commission to Revise Mental Health Code (1973 - 1977). This Commission drafted the then-new Illinois Mental Health Code and guardianship amendments to the Probate Act. Under the general chairmanship of Judge Joseph Schneider, I was chairman of the Developmental Disabilities and Human Rights Committees, which drafted the guardianship revisions and the Mental Health Bill of Rights, respectively. In addition to participating in drafting this important legislation, I helped to lobby for its passage.
- Chicago Project on Residential Alternatives (1983-1985), Steering Committee (Privately funded effort to



amend Chicago zoning ordinances for the mentally handicapped) - Chairman (1984-1985).

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

In early 1993, Senators Paul Simon and Carol Mosley-Braun appointed the Illinois U.S. Senate Judicial Nomination Commission for the Northern District of Illinois (the "Commission"), to evaluate judicial candidates on the basis of merit. The Commission received approximately 140 applications to fill the 3 vacancies then existing on the U.S. District Court for the Northern District of Illinois. From these applications, the Commission selected 43 candidates to be interviewed by the full Commission. From these, ten names were selected to be sent to the Senators for nomination.

Each of the ten candidates was interviewed by committees of four bar associations: The Illinois State Bar Association; The Chicago Bar Association; The Chicago Counsel of Lawyers; and The Federal Bar Association. I am attaching as Exhibit III(3) copies of the evaluations I received from all but the Federal Bar Association, which keeps its evaluations confidential. Of course, I have no objection to that evaluation being made available to the Senate Judiciary Committee.

While I was disappointed not to have been selected to fill one of the first three vacancies in the summer of 1993, I was informed at the time by both Senator Simon and Senator Mosley-Braun that they intended to chose from the remaining seven candidates when the next

vacancies arose. Thus, when Judges John Grady and John Nordberg announced that they would be taking senior status in the spring of 1994, I was quick to let the senators know that I was still very much interested in fulfilling this career-long ambition. No further interviews were conducted at that time, and Senator Simon informed me in early May that my name would be submitted to the President.

Since then, I have been interviewed by a Department of Justice group led by Eleanor D. Acheson, the Seventh Circuit representative of the American Bar Association (Thomas E. Hayward), and an agent from the Federal Bureau of Investigation.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an

administrator with continuing oversight responsibilities.

I intend to observe the constitutional requirement that the courts of the United States should decide only "cases and controversies," and that Congress, not the courts, makes the laws. A district judge must confront the wide variety of cases that come before the court within this context of case-by-case resolution of actual conflicts. While the role of the judiciary should not be decided by popular sentiment or media coverage, judges should be sensitive to the risk that their decisions in certain cases might be interpreted as extending beyond the legitimate boundaries of judicial discretion.

With this in mind, one must acknowledge that some of the decisions that have come under the most severe criticism were well within constitutional boundaries. At the Supreme Court level, Brown v. Board of Education, 349 U.S. 294 (1954) (school desegregation) and Batson v. Kentucky, 467 U.S. 79 (1986) (peremptory challenges based on race), were controversial when issued but have since gained respect. In another, more recent context, the Court was compelled to "legislate" the issue of retroactivity with respect to the 1991 amendments to the Civil Rights Act because the statute was silent on the issue. Rivers v. Roadway Express, Inc., \_\_\_ U.S. \_\_\_ 194 WL 144450 (1994). In still another context, the Supreme Court has endured historical criticism for being "judicially inactive" in responding too rigidly to major social change. E.g., Plessy v. Ferguson, 163 U.S. 537 (1896), Dred Scott v. Sanford, 60 U.S. (19 How.) 393 (1856).

The genius of our legal institution is its mission to resolve disputes, large and small, utilizing the adversary system and respecting states' rights and the separation of powers among our three branches of government. U.S. district judges must balance their limited judicial mandate against their unique role as the first gatekeeper of our constitutional rights and privileges.

ROBERT W. GETTLEMAN  
SOURCES OF INCOME

	<u>1993</u>	<u>Estimated</u> <u>1994</u>
Robert W. Gettleman		
D'Ancona & Pflaum	198,515	200,000
D'Ancona 222 Associates	251	250
Bob Jo Investments	-7,782	-7,800
DP Partners	264	250
D'Ancona 231	-140	-140
3839-45 Greenview	-194	-194
Bolar & Co.	-9,000	-9,000
Interest & Dividends	8,000	8,000
Joyce Gettleman (spouse)		
Piven Theatre	450	450
Psychology Practice	17,500	18,000
North Sub. Spec. Ed. Dist.	22,464	24,000
Lynn Gettleman (daughter)		
American Medical Association	8,000	9,000
Dividends & Interest	1,500	1,500
Jeffrey Gettleman (son)		
Self-employed (painting)	1,000	0
Dividends & Interest	1,900	1,900

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

Robert W. Gettleman

ASSETS			LIABILITIES		
Cash on hand and in banks	34	000	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule			Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule Personal Residence	125	000
Real estate owned—add schedule Personal Residence	425	000	Chattel mortgages and other loans payable		
Real estate mortgages receivable			Other debts—itemize:		
Automobile and other personal property	111	000	Credit Cards	3	000
Cash value—life insurance	47	000			
Other assets—itemize: Annuity	44	000			
100 sh. Canadian Southern Pet.		475			
D'Ancona & Pflaum - Capital Acc.	46	000			
Retirement Plans & IRAs	542	000	Total Liabilities	128	000
Other Investment Partnerships	156	312	Net Worth	2,277	787
Total Assets	1,405	787	Total Liabilities and net worth	1,405	787
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As codonor, cosigner or guarantor	42	132	Are any assets pledged? (Add schedule.)	No	
On leases or contracts	No		Are you defendant in any suits or legal actions?	No	
Legal Claims	No		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	10	000			
Other special debt					



ROBERT W. GETTLEMAN  
FINANCIAL STATEMENT  
OTHER INVESTMENT PARTNERSHIPS

	Estimated Value
D'Ancona 222 Associates	
DP Partners	4,977
D'Ancona & Pflaum/231 S. State	3,701
3839-45 Greenvview Ltd. Partnership	1,581
Bob Jo Investments	0
Bolar & Co.* (50% interest)	<u>146,063</u>
Total Other Investments	<u>156,312</u>

---

\*Bolar & Co. is an investor in the following:

216,000 sh. Colorgen	75,000
Wheeling Park Partners	11,990
Main Point Partners	4,104
Prospect Partners Ltd.	698
Hutchinson II Ltd. Partnership	2,360
Oak Partners	9,753
Hutchinson I Ltd. Partnership	822
Lakeview Limited Partnership	2,502
RR Investors eighteen	0
Naperville Washington Venture	66,759
D'Ancona Citation Associates	27,691
Dean Witter Active Asset Account	
per attached statement	<u>165,429</u>
Total Other Investments	<u>292,126</u>
Robert W. Gettleman 50% interest	<u>146,063</u>

The above partnerships have been valued at the capital account balance. Partnerships with negative capital accounts have been valued at zero. The partnerships are illiquid and no market for their sale exists.



# DEAN WITTER REYNOLDS INC.

Your Account Executive  
JOHN OPPENHEIM MGR  
SENIOR VICE PRESIDENT - INVESTMENTS  
DEAN WITTER REYNOLDS INC.  
300 N. WOODLAND ST. - P.O. BOX 4158  
WOODLAND HILLS, CA 91367  
(818) 986-2550

Fiscal Year Ends 12-31-84

## ACTIVE ASSETS<sup>®</sup> ACCOUNT<sup>®</sup>

FOR MONTH ENDING JULY 31, 1984

PAGE 1 OF 5

Account Number  
Social Security Number  
AAA Customer Service  
1 800 869 DEAN

BOLAR & CO  
A PARTNERSHIP  
10 NORTH LA SALLE  
ROOM 300  
CHICAGO IL 60602-2505

### Asset Summary

	Value	Percent of Assets
Money Market Funds	\$32,414.86	20.6%
Stocks/Options	69,311.26	44.0
Municipal Bonds	0.00	0.0
Corporate Fixed Income	0.00	0.0
Government Securities	0.00	0.0
Mutual Funds	56,282.25	35.5
Unit Investment Trusts	0.00	0.0
Certificates of Deposit	0.00	0.0
Commuter Insurance	0.00	0.0
Other	0.00	0.0
Asset Value	\$158,008.36	100.0%
Cash	0.00	
Total Asset Value	\$158,008.36	

### Income Summary

	This Month	Year To Date
Money Market Funds	\$100.34	\$563.93
Stocks	27.50	277.00
Municipal Bonds	0.00	0.00
Corporate Fixed Income	0.00	0.00
Government Securities	0.00	0.00
Mutual Funds	162.44	1,347.31
Unit Investment Trusts	0.00	0.00
Certificates of Deposit	0.00	0.00
Other	0.00	0.00
Total Income	\$318.28	\$1,968.24
Taxable Income	\$127.84	\$734.13
Tax Exempt Income	\$190.44	\$1,234.11

### Activity Summary

Total Asset Value as of June 30 1984	\$155,548.12
Cash/Money Market Activity for July	
Closing Balance as of 6/30	\$12,637.02
Income	310.28
Deposits	0.00
Assets Sold	0.00
Other	0.00
Checking	350.00
Visa	0.00
Withdrawals	0.00
Assets Bought	182.51
Closing Balance as of 7/31	\$12,947.86
Net Change Cash/Money Market Activity	222.14

### Changes in Asset Value for July

Value of Priced Assets as of 6/30	\$122,911.16
Assets Bought	182.51
Assets Delivered	0.00
Assets Sold	0.00
Assets Delivered	0.00
Change in Value of Priced Assets	2,592.26
Value of Priced Assets as of 7/31	125,593.50
Net Change in Asset Value	2,682.40
Total Asset Value as of July 31 1984	\$158,008.36

The Active Assets Account provides, up to \$25 million in securities protection  
\$500,000 in coverage through the Securities Investor Protection Corp. and \$24.5  
million through independent third party coverage purchased by Dean Witter



# DEAN WITTER REYNOLDS INC.

BOLAR & CO  
A PARTNERSHIP

## ACTIVE ASSETS\* ACCOUNT FOR MONTH ENDING JULY 31, 1984

PAGE 2 OF 5

Account Number

### ASSET DETAILS

Cash and Money Market Funds	Amount	Pct of Assets	Est Yrly Income	Annualized 30 Day Yields
CASH	00	---	---	---
ACTIVE ASSETS MONEY TRUST	25,468.95	16.1%	1.000	5.93%
ON LIQUID ASSET FD DISC EXCH	6,965.91	4.4%	N/A	5.24%
<b>Total Cash and Money Market Funds</b>	<b>32,434.86</b>	<b>20.5%</b>	<b>01,000</b>	<b>1.96%</b>
				2.06%
				5.83%

### Stocks/Options

Common Stocks	Current Price	Pct of Assets	Est Yrly Income	Dividend Yield	Additional Information
100 BANKAMERICA CORP	69 1/4	3.1%	150	3.31%	Next Dividend Payable 09/94
2,000 CITRUS SA DE CV SR 8 ADR	2 3/4	5.5%	32	58%	Next Dividend Payable 10/94
2,000 CONSTRUCTION TECHNOLOGY INDS	N/A	N/A	0	0.00%	Next Dividend Payable 08/01/94
500 DEERE & CO	70 1/8	3.50%	100	2.85%	
500 EARL SCHEIB INC	3 7/8	1.2%	0	0.00%	
200 EVERGREEN MEDIA CORP CL A	17 1/4	3.450	0	0.00%	
150 FLUOR CORP	8 1/2	5.2%	78	95%	Next Dividend Payable 10/94
500 HAMBURGER HAMLET REST INC	6 1/2	2.1%	0	0.00%	
1,000 INTERGRAPH CP	9 3/4	9.750	0	0.00%	
500 MICROPOLIS	5 5/8	2.81%	0	0.00%	
500 NATIONAL SEMICONDUCTOR	18 7/8	3.2%	0	0.00%	
300 N SAFECORD SERVICES INC	15 1/4	2.9%	60	1.31%	Next Dividend Payable 09/94
1,700 SHERIDAN INDUSTRIES	11 1/4	10.4%	0	0.00%	
22 XOMA CORP MT 6 12 95	N/A	0.0%	0	0.00%	
<b>Total Common Stocks</b>	<b>69,206.25</b>	<b>44.0%</b>	<b>430</b>	<b>6.2%</b>	

### Preferred Stocks

Preferred Stocks/Options	Current Price	Pct of Assets	Est Yrly Income	Distribution Rate	Fund Plan Number	Cap Gains Potential
4 = COLLINS & AIKMAN CUM EXCH PFD	26 1/4	N/A	0	0.00%	Convertible Preferred	
<b>Total Stocks/Options</b>	<b>99,811.25</b>	<b>64.0%</b>	<b>9430</b>	<b>6.2%</b>		

### Mutual Funds

Dean Witter Mutual Funds	Current Price	Pct of Assets	Est Yrly Income	Distribution Rate	Fund Plan Number	Cap Gains Potential
2039 934 INTERCAPITAL QUALITY MUNI TR	14 1/250	18.2%	2,203	7.65%	044342543	Relativ
628 106 DEAN WITTER DEVELOPING GROWTH	16 0300	6.3%	N/A	N/A	044810784	Relativ
664 619 DEAN WITTER CAPITAL GROWTH SEC	11 6700	4.9%	N/A	N/A	044817415	Relativ

## DEAN WITTER REYNOLDS INC.

ACTIVE ASSETS ACCOUNT  
FOR MONTH ENDING JULY 31, 1984

PAGE 3 OF 5

BOLAR & CO A PARTNERSHIP		Account Number					
Mutual Funds							
Dean Witter Mutual Funds							
Current Price	Value	Per of Assets	Est Yrly Income	Distribution Rate	Fund Plan Number	Dividend Output	Cap Gains Output
30.0700	9,643.56	6.12	N/A	N/A	04080/988	Relinv	Relinv
	856,282.25	36.52	42,203	3.912			
Total Mutual Funds							
Asset Summary							
Total Asset Value		Value	Est Yrly Income				
	150,000.36		43,633				

## Authorized Limit

Your Authorized Limit equals  
 25,448.96 Money Market Trust balance  
 .00 + cash balance  
 2,679.05 + loan amount available to you  
 less 10 percent of the  
 assets in your margin account  
 (identified by asterisk)  
 .00 - debit balance

020,120.00 Authorized Limit

See reverse side for explanation

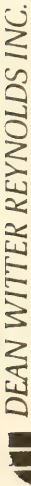
## Dean Witter Margin Loan Rates

Loan Amount	Rate	Effective Date	Prev. 25 1984
00 - 24,999	9.5/82		
25,000 - 49,999	8.7/82	PREVIOUS CHANGE: April 21 1984	
50,000 - 99,999	8.1/82		
100,000 & over	7.5/82		

## ACTIVITY DETAILS

Assets	Date	Activity	Quantity	Description	Price	Amount	Additional Information
	07-22	Direct Purchase	12.731	INTERCAPITAL QUALITY FUND 1R	14.3300	182.44	DIVIDEND REINVESTMENT
	07-27	Bought	100	X RATE	28	2,693.10	UNSETTLED PURCHASE

Note: Amounts for Unsettled Trades are not included in Activity Summary on Page 1



DEAN WITTER REYNOLDS INC.

ACTIVE ASSETS\* ACCOUNT

FOR MONTH ENDING JULY 31, 1984

PAGE 4 OF 5

BOLAR & CO  
A PARTNERSHIP

Account Number

Income	Date	Activity	Description	Amount	Investing Category
	07-12	Dividend	CIFRA SA DE CV SR B ADR	8 00	Stocks
	07-19	Dividend	FLUOR CORP	19 50	Stocks
	07-22	Ten Euro Dividend	INTERCAPITAL QUALITY MINI TR	182 44	Mutual Funds
	07-28	Dividend	ACTIVE ASSETS MONEY TRUST	79 68	Money Market Funds
	07-29	Dividend	DM LIQUID ASSET FD USC EACH	20 66	Money Market Funds
			Total Income	633 68	

Checking	Date	Written	Paid	Check #	Payee	Amount	Expensing Category
	07-14		07-20	0157	JAY STIEBER	350 00	
					Total Checking	630 00	

Money Market	Date	Activity	Description	Amount	Additional Information
	07-01	Automatic Investment	Closing Balance as of 6/30	425,666 77	
	07-13	Automatic Investment	ACTIVE ASSETS MONEY TRUST	25 00	
	07-20	Automatic Redemption	ACTIVE ASSETS MONEY TRUST	8 00	
	07-28	Automatic Reinvestment	ACTIVE ASSETS MONEY TRUST	-330 50	Dividend Reinvested
	07-29	Dividend Reinvestment	DM LIQUID ASSET FD USC EACH	79 68	
			Closing Balance as of 7/31	20 66	
				425,448 95	

\* Note - Closing Balance is for Active Assets Money Trust Only

Dean Witter Fund Summary	Ytd Dividends	Ytd Cap Gains	Ytd Taxes	Ytd Redemptions	Ytd Purchases	Features
INTERCAPITAL QUALITY MINI TR	1,254.13	0.00	0.00	0.00	1,254.13	Reinvest Dividends and Capital Gains
DEAN WITTER DEVELOPING GROWTH	0.00	0.00	0.00	2,603.13	0.00	Reinvest Dividends and Capital Gains
DEAN WITTER CAPITAL GROWTH SEC	0.00	0.00	0.00	1,900.00	0.00	Reinvest Dividends and Capital Gains
DM LIQUID ASSET FD USC EACH	53.78	0.00	0.00	0.00	6,965.91	Reinvest Dividends
DEAN WITTER DIVIDEND GROWTH	93.20	0.00	0.00	2,321.60	93.20	Reinvest Dividends and Capital Gains
Total	1,401.09	00.00	00.00	66,912.13	66,912.22	

For Mutual Fund Account Information call 1-800-526-3143 For all other Mutual Fund Information call 1-800-869-FUND



**DEAN WITTER REYNOLDS INC.**

**ACTIVE ASSETS® ACCOUNT  
FOR MONTH ENDING JULY 31, 1994**

PAGE 5 OF 5

Account Number

BOLAR & CO  
A PARTNERSHIP

**Tax Information**

This Month Year to Date

.00 33,661.01

Reportable Gross Proceeds

The tax information provided above should be used only as a guide, a complete 1099 will be sent to you



**NOMINATIONS OF THOMAS B. RUSSELL, TO  
BE U.S. CIRCUIT JUDGE; OKLA JONES II, G.  
THOMAS PORTEOUS, JR., JAMES ROBERT-  
SON, KATHLEEN M. O'MALLEY, JAMES A.  
BEATY, JR., AND DAVID BRIONES, TO BE  
U.S. DISTRICT JUDGES**

---

**THURSDAY, OCTOBER 6, 1994**

U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The committee met, pursuant to notice, at 9:07 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Howard M. Metzenbaum presiding.

Also present: Senator Hatch.

**OPENING STATEMENT OF SENATOR METZENBAUM**

Senator METZENBAUM. The hearing will come to order.

I see my colleague here from Ohio, Senator Glenn. Senator, would you like to make the presentation of Kate O'Malley?

**STATEMENT OF JOHN GLENN, A U.S. SENATOR FROM THE  
STATE OF OHIO**

Senator GLENN. Thank you, Mr. Chairman, and it is a real pleasure to be here today. I am pleased to introduce an individual who I know you and I both consider a superstar in Ohio's legal community, Ms. Kathleen O'Malley.

I also would like to introduce some of Kate's family members who have traveled to Washington to be with her today, and I told her a moment ago I don't know who is minding the store back home in Ohio right now. But with her today are Kate's husband, Anthony—and if you would stand, please, when I call your names—their daughter, Nora, and son, Jack; Kate's parents, Tom and Billie McDonald; her brother, Kevin, and his wife, Mary Beth, and their two daughters, Megan and Molly; her brother, Tom, and his wife, Cheryl, and their son, Spencer; her brother, Brian; and her uncle, Joe McDonald.

[The aforementioned persons stood.]

Senator FORD. You won't have any problem. [Laughter.]

Senator GLENN. If you and I could just get the votes of all those people, we are in.

Senator METZENBAUM. Well, I am having a little difficulty conducting this hearing; none of my colleagues are here. I wonder if

the children would want to come up and sit here and help me judge whether Kate O'Malley should be a judge. Why don't you all come up here with me? [Laughter.]

Come on up.

Senator GLENN. They don't have to be on best behavior. Given the antics of full-fledged Senators the last few weeks; they can do as we are doing. [Laughter.]

Senator METZENBAUM. There is some question as to the intellectual level of those who are joining me as compared to some on other occasions. [Laughter.]

Senator GLENN. I might say the intellectual level just went up, Howard.

Senator METZENBAUM. Please proceed, Senator Glenn, and be certain you speak in terms that these children will understand, and me, too.

Senator GLENN. Fine. Thank you.

Kate's nomination has been greeted with praise from lawyers and nonlawyers alike back home in Ohio, and with good reason. She is a seasoned litigator, known for her work on complex and pivotal cases. She has excelled not only in the private sector, but has also shown a strong commitment to public service.

Kate started her career as a law clerk in the Sixth Circuit Court of Appeals, clerking for an individual I consider to be one of the finest judges ever to serve in the Federal courts, Nathaniel Jones. She then gained significant private sector experience working as an associate for Jones, Day, and then as a partner for Porter, Wright, two of the top law firms in Ohio. Kate later joined the Ohio attorney general's office, serving as chief counsel, and most recently as first assistant and as chief of staff.

As you see from her record, Kate has first-rate legal skills and impressive litigation experience. She has earned a well-deserved reputation for fairness, for integrity, and for her in-depth knowledge of the law. I think Kate promises to be a shining star on the Federal bench, and I am very pleased to offer the committee my very highest recommendation. I think she is going to be a great judge.

Thank you, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Senator Glenn.

#### **STATEMENT OF HON. HOWARD M. METZENBAUM, A U.S. SENATOR FROM THE STATE OF OHIO**

Senator METZENBAUM. As you know, you and I joined together in recommending Kate O'Malley, who is probably one of the best examples of what one should be or seek to have as a Federal jurist. She is universally acclaimed for her integrity. Her fairness and character are without question, and her ability to combine efficient management of a large attorney general's office, which, incidentally, gives her the highest and strongest recommendations, is sufficient reason for you and me to join together in making this recommendation.

I have no doubt in my mind that she will acquit herself well as a Federal jurist, and undoubtedly will move up the ladder. Maybe some day we will say Justice, instead of Judge Kate O'Malley, but I think it is a great beginning. I think her activities in the commu-

nity also speaking well of her, being on numerous boards and committees. I think she is a founding board member of the Ohio Legal Assistance Foundation, and many other community activities.

[The prepared statement of Senator Metzenbaum follows:]

PREPARED STATEMENT OF SENATOR HOWARD M. METZENBAUM

It is my pleasure to introduce Kate O'Malley, and to recommend her confirmation to be a U.S. District Judge for the Northern District of Ohio. In Ohio, Ms. O'Malley has acquired a stellar reputation as the top assistant attorney general and chief of staff to Attorney General Lee Fisher.

In many ways, Kate O'Malley is the finest example of what one should seek in a Federal judicial nominee. Her integrity, fairness and character are without question. And her ability to combine efficient management of a large attorney general's office with active participation in pro bono and legal aid activities is truly extraordinary.

In addition, Ms. O'Malley brings a diverse wealth of legal experience to the Federal Bench. She has been both a litigator in private practice and the chief counsel, assistant attorney general, and chief of staff for the Ohio attorney general.

She also has served on numerous boards and committees whose goal is to improve the operation of, and increase access to, the civil justice system, including the Ohio Legal Assistance Foundation (of which she is a founding board member), the Columbus Bar Association civil justice reform task force, and a U.S. District Court Committee on alternative dispute resolution.

She also conceived and spearheaded "Project Above Ground," in which employees of the attorney general's office worked on their own time to raise money for victims of the Mid-West floods of 1993, for which she received a certificate of recognition from the Red Cross. She also supervises and participates in "Project Wish List," which provides goods and funds to domestic violence shelters across Ohio.

A significant majority of the ABA Committee has given Ms. O'Malley its highest rating—well-qualified. Due to her diligent work as the people's attorney, she enjoys the support of Ohio law enforcement. Due to her commitment to legal aid and pro bono work she enjoys the support of the public and private bars, civil rights organizations, and women's groups. Among her biggest supporters is one of the most distinguished 6th circuit judges, Nate Jones, who is very familiar with her work having had her as a law clerk.

Given her excellent performance as a litigator and administrator and her commitment to public service, I believe that Kate O'Malley will be an outstanding jurist. I urge my colleagues to support her nomination.

Senator METZENBAUM. Kate, is there anything you would like to say to this committee concerning your ability, your background, whatever?

Ms. O'MALLEY. Senator, I would just like to say that I am honored to be here and I am very pleased that you and Senator Glenn have given me the opportunity to be here.

Senator METZENBAUM. Well, let me just see if any of my colleagues have questions. [Laughter.]

Well, I think you have done very well with the committee. I have checked with my colleagues and they all seem to think you can handle the position well. If we are able to do so, we will see if we can get you confirmed before the Senate goes on recess in a day or two.

We wish you well and good luck to you, Kate.

Ms. O'MALLEY. Thank you, Senator.

Senator METZENBAUM. I want to thank all of you for being so helpful.

I see only one other Senator here, or am I missing anybody?

Senator BREAUX. Myself and Senator Ford are here, Mr. Chairman.



Senator METZENBAUM. Okay. I don't know which one of you gets priority. I guess Senator Ford has a little seniority. So, Senator Ford, would you like to present your candidate, Thomas Russell?

Now, Tom, you understand you have got to not only get through me. There are my colleagues up here and you have got to look out for them as well.

Senator FORD. Would a grandfather image help? [Laughter.]

Senator METZENBAUM. Senator Ford, would you like to proceed?

**STATEMENT OF HON. WENDELL H. FORD, A U.S. SENATOR  
FROM THE STATE OF KENTUCKY**

Senator FORD. I would be glad to, and I do thank you, Mr. Chairman, and I appreciate the attitude that you spread out over the hearing this morning with the young people there. That is really what we are all here for, and I compliment you for that gesture this morning.

Senator METZENBAUM. Thank you.

Senator FORD. It is with great pleasure that I am able to introduce Thomas B. Russell to this committee as a nominee for the U.S. district court vacancy in the Western District of Kentucky.

I believe President Clinton has made an excellent choice, as Tom possesses the kinds of outstanding qualifications, background, and character which are necessary to become an excellent judge. I am very proud to have played a role in his nomination.

By any standard, Tom is qualified to serve as a U.S. district judge. He has a strong intellect, which is coupled with a balanced view of the world that can only come from experience. Tom's professional achievements are numerous. He has practiced law in Paducah, KY, for over 24 years. He started with a general civil practice and has since concentrated in civil litigation, becoming one of the most prominent litigators in the western part of our State.

In addition, Tom has been active with the legal profession and in his community. He has served as president of the Kentucky Bar Association, president of the McCracken County Bar Association, and president of Kentucky Defense Counsel. Demonstrating that a true leader must give back to the community, he has made time to chair numerous civic boards and organizations. He has also shown great interest and involvement in continuing legal education, serving as a speaker for the University of Kentucky and University of Louisville schools of law.

To say that I have been impressed with Tom Russell is a huge understatement, and I believe that the committee will be persuaded as well. I know that he looks forward to the opportunity to serve the Nation and to take on the challenge that this position will most surely bring. For all of us with an interest in justice, I am sure that he will be up to the challenge.

Let me also take a moment, Mr. Chairman, to compliment and thank the members and staff of the Judiciary Committee for their expeditious handling of this nominee. I look forward to working with the committee in any way possible to expedite the confirmation of Thomas B. Russell.

May I make a personal statement, Mr. Chairman? It is not written and I may not say it as well as I should, but let me thank you for your years of service here. As you leave, I think you want to

look back, as most of us do, that you have left a legacy, and one of those legacies is good nominees and good appointments that reflect well on those of us who have the responsibility to make decisions for this country.

I feel very complimented this morning, Mr. Chairman, to have the opportunity to present to you a man of the character and caliber of Tom, and I hope, if nothing else, that you will let him ride along on the Ohio judge's position. You said you would try to get it through. Could we be right behind that judge this morning?

I do thank you, Howard, very, very much.

Senator METZENBAUM. Thank you very much, Senator Ford, and it is the intent, if possible, unless we run into some difficulties, to expedite the confirmation process with respect to all of these nominees.

Senator McConnell, we are very happy to see you here this morning. Please proceed.

#### **STATEMENT OF HON. MITCH McCONNELL, A U.S. SENATOR FROM THE STATE OF KENTUCKY**

Senator McCONNELL. Good morning, Senator Metzenbaum. I first want to commend Senator Ford for his recommendation to President Clinton. I don't know Tom Russell very well, but I know several of his law partners with whom I have spoken about his credentials, and I think Senator Ford has made an excellent recommendation to the President. I commend the President for nominating Tom Russell. I think he will make an outstanding judge, and I am happy to be here today to second, in effect, this nomination and indicate the support from both Kentucky Senators for this fine selection.

Senator Ford has outlined Mr. Russell's credentials, which are truly outstanding. This is exactly the kind of person we ought to be putting on the Federal bench, and I am happy to be here today to recommend him to the committee.

Mr. Chairman, I have just a very brief statement that I would like to ask unanimous consent to appear in the record.

Senator METZENBAUM. Without objection, it will be included in the record. Thanks, Senator McConnell.

[The prepared statement of Senator McConnell follows:]

#### **PREPARED STATEMENT OF SENATOR MITCH McCONNELL**

Mr. Chairman, thank you for convening this hearing at this late date in the session. And, I appreciate the opportunity to introduce Tom Russell to the Committee.

Tom Russell came before you today as the nominee for federal district judge in the Western District of Kentucky. He will fill a vacancy that has existed for about a year, and I know plenty of work awaits him.

He is very well suited and qualified for this position. I know I don't have to tell the members of this Committee about how to evaluate a nominee, but I believe Tom Russell possesses the intellect, integrity and temperament to sit on the federal bench. And since he's a native Kentuckian and a partner in a very respected Paducah law firm, I am confident he has the appropriate judicial philosophy for the job—he will leave the law making to Congress, and he will be a disciplined judge.

Tom has had a distinguished career in private practice; he has had substantial trial experience in a wide variety of cases. He is a past president of the Kentucky Bar Association, and he is very involved in continuing legal education programs. He has a commitment to pro bono work, and as part of his Kentucky Bar Association work he conducted a study on gender bias within the Kentucky legal system.

In sum, Mr. Chairman, you have before you a highly qualified Kentuckian in Tom Russell. I am pleased to recommend him to you, and I hope he will be speedily confirmed.

Senator METZENBAUM. Mr. Russell, do you have any statement you would care to make to the committee?

Mr. RUSSELL. No, sir, except to say that I am honored and humbled to have this opportunity. I thank Senator Ford and Senator McConnell for their support, and I would pledge to anyone that if I am nominated I would uphold the standards expected of this high office.

Senator METZENBAUM. Well, there is no secret about it that your recommendation by Senator Ford, who is certainly one of the most respected members of our body and who has served with distinction for a good many years and is one of the leaders of our body, goes a long way with me, as well as my colleagues. I feel certain that we will be able to process your nomination rather promptly.

I have a couple of short questions.

Mr. RUSSELL. Yes, sir.

Senator METZENBAUM. Your questionnaire states that 98 percent of your practice has been civil litigation. If confirmed for a position on the Federal bench, you will be presiding over cases which you may include drug trafficking—Mr. Russell, I am told that I should swear you in, so I will do what the staff says.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. RUSSELL. I do, sir.

#### QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Your questionnaire states that 98 percent of your practice has been civil. If confirmed for a position on the Federal bench, you will be presiding over cases which may include drug trafficking, major Federal civil rights violations, and constitutional issues. What steps would you plan to take to familiarize yourself with those areas of the law in which you may lack that kind of previous experience?

#### TESTIMONY OF THOMAS B. RUSSELL, PADUCAH, KY, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF KENTUCKY

Mr. RUSSELL. Mr. Chairman, I have reviewed material that is available from the Federal Judicial Center. I know that they provide a wealth of information and seminars and videotapes. I plan to avail myself of all that information.

I guess more importantly, I will be sitting, if confirmed, in Paducah, KY, where a senior judge, Ed Johnstone, now sits. He has talked with me and has agreed to serve, if I am confirmed, as a mentor in all these matters, and I believe that will be my greatest help in that regard.

Senator METZENBAUM. From 1989 to 1991, you served as co-chair of the Kentucky Task Force on Gender Fairness in the Courts. The task force issued a report entitled "Equal Justice For Women and Men". What was the extent of your involvement with the task force, and, in summary, what were its findings?



Mr. RUSSELL. It was a broad report, Mr. Chair. My involvement was mainly from an organizational standpoint of the Kentucky Bar Association. I was an officer of the bar and we found that we had not kept records as to what gender any of our members were. When we did find out that we hadn't kept those records, we started keeping them, and we then, from that report, have completely diversified all our committees.

I was proud that when I was president of the Kentucky Bar Association that I appointed the first chair of our annual convention, which is the largest event we hold each year, Jennifer Kaufman, who is now Judge Jennifer Kaufman, a swing judge between the eastern and western district.

Senator METZENBAUM. What, in your opinion, is the obligation of an attorney or a judge to be involved in pro bono work or community activities, or do you think a judge can just hear the cases before him or her and not further involve himself or herself in the community's activities?

Mr. RUSSELL. From a judge's standpoint, Mr. Chair, I think it is the obligation to strongly encourage all lawyers to be involved in pro bono activities. I believe from a lawyer's standpoint that they have that ethical obligation and that they should be involved in pro bono activities.

Senator METZENBAUM. Do you have any opinion on the recent suggestions of so-called litigation reform that losers be forced to pay the legal fees of the winners in certain types of lawsuits?

Did you hear my question?

Mr. RUSSELL. Yes, sir. I am sure you are talking about the English rule. The purpose, as I understand—

Senator METZENBAUM. Well, let me say this. We are talking not only about that; we are talking about a proposal that is in the Superfund legislation which is not going to pass, but one that I had some concern about, and that is that if you didn't accept a settlement and you went to court, you had to pay 40 percent of the legal fees of the opposite side. Frankly, I am sort of offended by that and I just would like to get your reaction. You may not be offended by it.

Mr. RUSSELL. No, sir. I think we have to look very closely. I believe any restriction on right to trial by jury should not be imposed without a lot of qualifications. That is a fundamental right and people should have the right to bring their grievances to court. It may have a chilling effect on those who couldn't afford it.

Senator METZENBAUM. Thank you very much, Mr. Russell. We appreciate your comments.

Mr. RUSSELL. Thank you very much.

Senator FORD. Mr. Chairman, can he leave now?

Senator METZENBAUM. Yes. You need not remain.

Thank you very much, Senator Ford. We appreciate your presentation.

Senator FORD. Thank you.

Senator METZENBAUM. Senator Hutchison, I understood that Senator Breaux was willing to let you go before him. He was here before you, and if you would just make your presentation, we will just have you make your presentation and then we will go to Senator Breaux.

Senator Hutchison.

**STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S.  
SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman. I do want to thank Senator Breaux for allowing me to go. I didn't get the call that Judge Briones would be here until 9:10 last night, and I have a 9:30 meeting for which I can't be late. So I do thank Senator Breaux for his courtesy.

I thank you very much because I did want to make sure that the committee knows that I do support Judge Briones. I have had many calls on his behalf from friends of mine in El Paso, and I would like to just say that Judge Briones is now a judge in the El Paso County Court at Law No. 1 and he has been there since November of 1991. This court hears both civil and criminal cases, and exercises concurrent jurisdiction with State district courts.

Judge Briones is a member of the Council of Judges of El Paso County and, as such, takes part in formulating rules and regulations for the administration of justice in the county by the district courts and the statutory county courts.

Judge Briones is a 1969 graduate of the University of Texas at El Paso, and he received a bachelor of arts degree. He attended the University of Texas School of Law in Austin, TX, my alma mater as well, and graduated in 1971. He was No. 13 in his class of 75. He was, of course, awarded a juris doctorate degree. Prior to elevation to the county court at law, he was a practicing lawyer in El Paso. Judge Briones is 51 years old. He is married to Delia Briones and has four children.

I am very happy to recommend to the committee Judge David Briones for elevation to the Federal bench.

Senator METZENBAUM. Thank you very much, Senator.

Judge Briones, we are going to go forward with some of the other witnesses, and particularly Senators who are waiting, and then we will get back to you, but we wanted to make it possible for Senator Hutchison to make her very supportive statement of your candidacy.

Judge BRIONES. Certainly, Senator.

Senator METZENBAUM. Thank you.

Senator HUTCHISON. Thank you, Mr. Chairman, and thank you again, Senator Breaux.

Senator METZENBAUM. Senator Breaux, we are very happy to welcome you here this morning.

**STATEMENT OF HON. JOHN B. BREAU, A U.S. SENATOR FROM  
THE STATE OF LOUISIANA**

Senator BREAU. Mr. Chairman, we also have Congressman Bill Jefferson from the House, who is going to be with us to also introduce, I think, if that is permissible.

Mr. Chairman, thank you for making this time available. Let me start by personally congratulating you and the other members of the Judiciary Committee. The work that you all have done this year, I think, has been absolutely tremendous.

If you look at the record—and there are a lot of people in the country who say that Congress is not doing the business of the peo-



ple. I would say look to the Judiciary Committee, where this committee has reported out this year 100 Federal judgeships. That is an incredible amount of work that this committee has done. One hundred new Federal judges will be serving because of the investigation work and the nomination work that the Judiciary Committee has done. The people of this country will miss your service, and we congratulate you for that very, very fine record, along with other members of the committee.

It is my pleasure this morning, Mr. Chairman, to introduce, on my left, for consideration the nomination of Judge Okla Jones, who is already a sitting civil district judge in the city of New Orleans and the State of Louisiana.

I would like, Mr. Chairman, if I could, to introduce his wife in the audience, Carolyn, and their son, Jarred, if they would stand up and be recognized.

[The aforementioned persons stood.]

Senator BREAU. Jarred is a young potential attorney and judge as well.

Senator METZENBAUM. Jarred, you had better come up here if you want to help me.

Senator BREAU. Jarred, to the bench.

Senator METZENBAUM. Come on, Jarred; let's go buddy, on the double.

Senator BREAU. Jarred, you go help the chairman.

He can ask the questions, Mr. Chairman. They will be tough questions.

Let me just say briefly, Mr. Chairman, because you have a busy schedule, I think that when we nominate men and women to serve on the Federal bench, one of the greatest criteria, I think, that we can look to is their understanding of not only the law in the libraries, but also an understanding of the people that will come before their courts.

I think it is very unique, and our other nominee this morning is in the same situation, that this man has already served the people as a sitting judge, looking at civil cases, at criminal cases, over a relatively long period of time.

If you just look at his professional education, he is a graduate of Southern University in Louisiana, in Baton Rouge. He attended Northwestern State University in Louisiana, Clark University in Massachusetts, Emory University in Atlanta, GA, and has a law school degree from Boston College in Brighton, MA. He brings to this position the qualifications professionally and educationally, and, so important, from a standpoint of actually having dealt with the law at all levels, civil and criminal as well.

I also know my senior Senator, Senator Johnston, also joins with me in the recommendation of Judge Okla Jones for the Federal bench in Louisiana.

Senator METZENBAUM. Thank you very much.

I think we will go through. Are there any other Congresspersons or Senators here?

Senator BREAU. Mr. Chairman, we have another nominee. We have two, fortunately, and if it is all right, we could maybe make comments about both of them.

Senator METZENBAUM. Certainly.

Senator BREAU. We would like to introduce, as well, a good friend, also a sitting judge in Jefferson Parish, outside the city of New Orleans, a civil district judge, Judge Tom Porteous.

I would also like to introduce Tom Porteous' wife, who is in the audience, Mell. Mell, if you would stand?

[Ms. Porteous stood.]

Senator BREAU. They have friends coming from New Orleans as well for this momentous day.

Again, Mr. Chairman, all of the nominees have law degrees. They all have great educational backgrounds. They have all been to the good schools. They have all done the work academically and in the library, so to speak, that is necessary to serve on a Federal bench.

Judge Porteous is a graduate of Louisiana State University, also a graduate, and received his juris doctorate degree, from Louisiana State University as well. But I think the thing that impresses me the most is that we are taking from the State judicial system a person who has been a judge of the 24th judicial district in Jefferson Parish since 1984. The people elected him. They have watched his service; they have supported what he has done, supported the decisions that he has been making.

In addition, he served as guest lecturer in universities. He has served as assistant district attorney, special counsel to the Louisiana Department of Justice, and also served as city attorney, as well as in private practice.

I think those types of qualifications in both of these men show that they are balanced and that they have good backgrounds and experience in law, and both Senator Johnston and I wholeheartedly recommend them for favorable consideration.

Senator METZENBAUM. Congressman, would you care to be heard?

#### STATEMENT OF HON. WILLIAM J. JEFFERSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF LOUISIANA

Representative JEFFERSON. Yes, sir, Mr. Chairman. I am William Jefferson. I represent the Second Congressional District in Louisiana, from which Judge Jones hails, and I represent a part of Jefferson Parish, although I do not believe I represent Judge Porteous. Nonetheless, I might at any time, given what the court finds on reapportionment. [Laughter.]

It does no good to recite the credentials of these two men, which Senator Breau has already done so well. I do want to say, though, in the case of Judge Jones that I have known him for many years. We were in school together. He and I grew up in rural north Louisiana, he on the western side of the State and I on the eastern side of the State.

I have watched his career as it has unfolded in our city and it has been quite impressive, both when he worked as a constitutional lawyer for people who were trying to get their civil rights claims heard, to the time when he became the first African-American city attorney for our city. If he is confirmed, he will be the only African-American judge on the Eastern District bench. He deserves nothing less than this high honor, and we are very proud of his work and of his service and I certainly urge his confirmation.

Judge Porteous also enjoys a fine reputation in our area. He has worked with some outstanding public officials there, including the district attorney from Jefferson Parish, and has served in the city attorney's office in his parish as well.

The great thing about our State—and we are sometimes criticized for all the judges we elect, Senator Breaux, but I think that it brings our judges closer to the people, and at a time when sometimes our Federal bench is criticized for being somewhat aloof from the people, somewhat isolated, it, I think, is a great addition to have people who actually have had to work with people to hold their offices, to gain their offices, and to respond to people. I think these judges will bring that sort of attitude to their work on the Federal bench. So I am very proud to recommend each of them for confirmation by this committee.

Thank you, Mr. Chairman.

[The prepared statement of Representative Jefferson follows:]

#### PREPARED STATEMENT OF CONGRESSMAN WILLIAM JEFFERSON

Good morning Mr. Chairman and member of the committee. I am honored and pleased to be here today with Senators Johnston and Breaux in presenting Judges Okla Jones and Thomas Porteous, Jr. to this committee. I believe that Judge Jones and Judge Porteous will be excellent additions to the U.S. District Court for the Eastern District and I applaud President Clinton for nominating them.

I believe that Judge Jones and Judge Porteous will serve in the tradition of some of the outstanding jurists that have served on the district court in New Orleans.

Judge Jones brings diversity and an extensive legal background and experience to the court. He has been a judge on the civil district court, division N, for the parish of Orleans where he has participated in hearing a variety of civil cases ranging from general tort actions to maritime and complex class action asbestos cases. This civil district court handles the largest volume of civil litigation in the State of Louisiana.

Judge Jones was the first African-American city attorney for the city of New Orleans and served as the special counsel to the New Orleans city counsel. Judge Jones is very active in the local community and has written and participated on a number of panels regarding trial advocacy and procedure issues.

Judge Porteous brings extensive trial court experience and criminal trial experience to the court. Judge Porteous currently serves on the 24th Judicial District Court which has jurisdiction for criminal and civil matters in Jefferson Parish.

Judge Porteous served in the Louisiana attorney general's office, in the Jefferson Parish district attorney's office, serving as the chief of the Felony Complaint Division and more recently as city attorney for the city of Harahan. Throughout this period, Judge Porteous has had a successful private law practice.

For these reasons, I strongly urge this committee to recommend Judge Okla Jones and Judge Thomas Porteous, Jr. to the full Senate for confirmation to the U.S. District Court for the Eastern District of Louisiana.

Mr. Chairman, I appreciate the opportunity to appear before your committee. Thank you.

Senator METZENBAUM. Unless you have an opening statement, Senator Hatch, I was going to go ahead with some questions.

#### OPENING STATEMENT OF SENATOR HATCH

Senator HATCH. Well, I just want to congratulate all of you who have been nominated. We have tried to do our very best to get as many through as we can this year, and it is going to come up to around 127, which is really the highest in the history of the Judiciary Committee, except for one other time, and that was during the Reagan years when they had many more judgeship vacancies, and there were 132. So we feel like we have done a pretty good job. We



apologize to some that we just haven't been able to get to, but we have done the best we can.

We commend the Senators who have made these selections, in this case Senator Breaux, and we appreciate having you all here and we are looking forward to trying to get you all through before the end of this year. It is not always easy, but we will do our best.

Senator BREAU. Mr. Chairman, I have a statement from Senator Johnston on behalf of both nominees.

Senator METZENBAUM. Without objection, it will be included in the record.

[The prepared statement of Senator Johnston follows:]

PREPARED STATEMENT OF HON. J. BENNETT JOHNSTON, A U.S. SENATOR FROM THE  
STATE OF LOUISIANA

Mr. Chairman and members of the committee: I am very pleased to appear before the committee today for the purpose of introducing to you Okla Jones, of New Orleans, LA, nominee to the U.S. District Court for the Eastern District of Louisiana.

It is most fitting that an individual of Mr. Jones' high standards and eminent qualifications be nominated for this very important position.

Okla Jones comes to the committee with impressive credentials, having served since 1991 as judge of division "N" of the civil district court for the parish of Orleans. Judge Jones attended Boston College School of Law, where he received a full tuition scholarship. He received his B.A. from Southern University in 1968 and graduated Phi Beta Kappa.

Okla Jones has a distinguished career in law and public service. Among the professional organizations in which Judge Jones holds membership are the American, Louisiana State, National, and New Orleans Bar Associations; the American Trial Lawyers Association, the Louisiana Trial Lawyers Association, and the National Conference of Black Lawyers. He is also a past president of the Greater New Orleans Louis A. Martinet Society and is presently vice-chairman of the Judiciary Commission of Louisiana.

In addition, Okla Jones serves in the Louisiana District Judges Association, the Leukemia Society of New Orleans, Big Brothers/Big Sisters of Greater New Orleans, and Kappa Alpha Psi fraternity.

Judge Jones has extensive experience as a public servant, having worked as a staff attorney with the New Orleans Legal Assistance Corp., staff attorney for the American Civil Liberties Union of Louisiana, project director for the New Orleans Office of the Lawyers' Committee for Civil Rights Under Law, a part-time staff attorney with the Orleans Indigent Defender Program, and a city attorney for the city of New Orleans.

Judge Jones has been the recipient of numerous honors and awards, including being named the William J. Kenealy, S.J., Alumnus of the Year by the Boston College Law School Alumni Association in 1993.

I have known Okla Jones for several years and found him to be very professional and competent as a lawyer and community leader. Moreover, I am confident he possesses the necessary judicial temperament to serve on the U.S. District Court for the Eastern District of Louisiana.

In sum, I believe that Judge Jones possesses the integrity, appropriate demeanor, and aptitude for legal scholarship that will enable him to serve well and with distinction if he is confirmed.

Mr. Chairman, Okla Jones II, is imminently qualified to serve as a judge to the U.S. District Court for the Eastern District of Louisiana and I strongly urge the committee act favorably on his nomination.

Senator METZENBAUM. I want to say publicly that Senator Hatch and the members of the minority on this committee, as well as in the Senate, have been very cooperative as far as processing the nominations. It is not too hard to cause delay. They have not caused delay; they have helped us expedite the process.

Now, Judge Jones, I think I have some questions for you.

Senator BREAU. Mr. Chairman, can we leave? Would that be all right?

Senator METZENBAUM. Yes. Thank you very much, Senator Breaux. You were very courteous to Senator Hutchison, and your recommendation means a lot to us.

I will swear you both in at the same time.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Judge JONES. I do.

Judge PORTEOUS. I do.

#### QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Thanks, Congressman, for being with us.

Judge Jones, district court judges sometimes are faced with applying a decision of the court of appeals with which they disagree. If confirmed as a district court judge, would you have any difficulty applying or enforcing precedents established by the fifth circuit or by any of the other circuits, for that matter, even in those cases in which you disagree with them?

#### TESTIMONY OF OKLA JONES II, NEW ORLEANS, LA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA

Judge JONES. Senator, I would have no problems at all. I have followed the circuit court and the Supreme Court in the State court since I have been on the bench, and I certainly would do the same on the Federal bench.

Senator METZENBAUM. Thank you. Congress is contemplating legislation aimed at reducing pervasive overcrowding in Federal courts by allowing Federal judges to assign some of their smaller cases to court-appointed arbitrators. Many judges and lawyers have expressed concerns about this approach, saying that it infringes upon the rights of citizens to a jury trial.

Given your experience as a litigator and a judge, do you have any thoughts on that proposal?

Judge JONES. Senator, I guess I would look at that similar to alternative dispute resolution, where if it is voluntary and if it is a situation where those parties are not denied due process and are not denied their rights to proceed with a jury trial or a judge trial, then I see no problems with it. But I think there should be some options involved to make sure that their rights are not abused.

Senator METZENBAUM. There has been a growing use of secrecy orders in Federal courts. One appeals court judge has said, quote, "There is an excess of court secrecy in civil litigation and it presents a serious problem for the health and safety of the American public." In fact, Senator Kohl, a member of this committee, has proposed a bill seeking to restrict the use of secrecy orders in settlements.

What considerations do you believe a judge should take into account when faced with a request to keep a court file confidential, especially when doing so might endanger the public health or safety?

I think you are familiar with some of these big cases that get settled, multi-million-dollar settlements; some claim that some corporation has done violence to its customers or to those who buy its drugs, whatever the case may be. Then, as a condition of the settle-



ment, they get a secrecy order and the court stamps his or her approval on it. Do you have any reaction to that?

Judge JONES. Senator, I think you probably have to do a balancing test there. You would probably have to weigh the private or personal or confidential interest that might be involved with the secrecy, as opposed to the effect that it might have on the public as a whole. If it involves situations where the public might be adversely affected or information that the public should have access to, then I think those would be factors that you would have to look at that might mitigate against doing the secrecy order.

Senator METZENBAUM. Since 1991, you have been a judge on the civil district court for the parish of Orleans. As you explained in your judicial questionnaire, this is a court of general civil jurisdiction. If confirmed, you will face a docket that includes a heavy criminal caseload, as well as constitutional, employment, and civil rights cases. What steps do you plan to take to familiarize yourself with those areas of the law in which you may not have had previous experience?

Judge JONES. Senator, I have had extensive civil rights litigation background. I worked for the Lawyers Committee for a number of years. I spent some time with the ACLU. I spent some time with the legal services program. In private practice, I also did some employment discrimination work.

In private practice, I also have some criminal work. For the last 4 years and while I served as city attorney, I didn't have any criminal work, but I too will make sure that I get all of the material from the Federal Judicial Center and make sure that I bring myself up to date in the evolving area of the criminal law. I don't see any problem with coming up to date.

Senator METZENBAUM. Thank you.

Senator Hatch.

#### QUESTIONING BY SENATOR HATCH

Senator HATCH. Judge Jones, I just want to note for the record your rich and varied experience. You have had lots of experience in private practice, working in public service and also as a judge, and so we look forward to seeing you confirmed.

Judge JONES. Thank you, Senator.

Senator HATCH. I just want to ask a few questions that are pretty standard questions. Are you committed to following Supreme Court precedent faithfully, and circuit court precedent faithfully, and giving it full force even if you personally disagree with that precedent?

Judge JONES. I certainly am.

Senator HATCH. Are you also committed to follow the law of the circuit in which you will be serving?

Judge JONES. I have done that as a State court judge and I certainly would do it as a Federal court judge.

Senator HATCH. What will you do if the Constitution and laws conflict with what you really think the law ought to be? What if you see that conflict between what you think it ought to be and what the Constitution and the enacted laws are?

Judge JONES. Senator, I would follow the Constitution and the laws. My personal belief would have no effect on my abidance with the law.

Senator HATCH. I think it is essential that under the rule of law, judges not act politically. If we have judges act politically, then it undermines the whole basis of law, and it undermines the whole reason why these are lifetime appointments. So do we have your commitment that you will decide the cases based upon the law and the facts and not let political considerations influence your judgment?

Judge JONES. You have my commitment, Senator.

Senator HATCH. All right. Well, I am proud of you and proud to have you here before the committee, and I look forward to seeing you confirmed before tomorrow, hopefully. We hope we can get that done. We are doing our best. In these last few dog days, it takes a lot of work to make sure that we don't have holds on people and that we get as many judges through as we can, so we can fill these positions and do them properly. We are glad to have you here.

Judge JONES. Well, I certainly hope and pray that that occurs, too, Senator.

Senator HATCH. Thank you.

Senator METZENBAUM. Your turn to question. Do you have any questions?

[No response.]

Senator METZENBAUM. How about if I ask you a question?

Senator HATCH. No, no; let him ask one.

Senator METZENBAUM. Do you have one for him?

[No response.]

Judge JONES. This is the first time that he has been without questions since I can recall. [Laughter.]

Senator HATCH. He is a fine-looking young man is all I can say. We are proud to have him here.

Senator METZENBAUM. I have a question for you. In his decisions that he makes at home, do you think he is a fair judge?

Judge JONES. Yes.

Senator METZENBAUM. OK. That is good enough. You have passed the test. Thank you very much and you may leave if you like and we will have a few questions for Judge Porteous.

Judge JONES. Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much.

Judge Porteous, do you have any opening statement you care to make?

# **TESTIMONY OF G. THOMAS PORTEOUS, JR., METAIRIE, LA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF LOUISIANA**

Judge PORTEOUS. Other than to thank the committee for allowing us to come up and try to expedite this process, as I know you have done the entire time.

## **QUESTIONING BY SENATOR METZENBAUM**

Senator METZENBAUM. Much of the expediting reflects the cooperation of the minority, headed up by Senator Hatch.

Judge Porteous, what would you do if faced with a fifth circuit precedent that controlled a matter before you, but with which you personally disagreed? You just think that the decision is absolutely wrong. What would you do?

Judge PORTEOUS. My oath and my obligation and what I would do are the same. I would follow that precedent.

Senator METZENBAUM. As a judge, you have worked with judicial law clerks. In some cases, judges have their law clerks write the first draft of opinions, and then the judge edits the result. Some people believe that judicial law clerks should not play the role of judge because of the importance of a first draft and the extent to which that draft becomes the final product. We are all aware, however, of the huge Federal docket that judges face and the resulting time constraints.

How would you respond to those concerns, and how much of a problem do you think that is?

Judge PORTEOUS. It would appear to be on an individual basis, Mr. Chairman, but in my experience I will go over the particular facts and circumstances of a case either prior to that case coming to me or post the submission of that case, give my clerk an assignment of what my thoughts and concepts are on it so that I can obtain the research available to write my own decision.

I am not saying that I don't give it back to my clerk for further editing and modification, but I think it is on an individual basis. I think Federal judges are given law clerks for a valuable purpose, and that is to help them expedite their way through the Federal laws that are on the books.

Senator METZENBAUM. Now, you have served on the 24th Judicial District Court bench in the State of Louisiana for about 9 years. Are you sure you want to move to the Federal bench?

Judge PORTEOUS. Absolutely, Senator.

Senator METZENBAUM. Why?

Judge PORTEOUS. I have always thought that I can be of valuable service to the community as a judge. That is why I ran for judge in the first place. I think going from the State bench to the Federal bench, I can likewise provide whatever service I can give to the Federal judiciary, and I would very much like to move to the Federal bench, Senator.

Senator METZENBAUM. Well, I think you are going to.

Senator Hatch.

#### QUESTIONING BY SENATOR HATCH

Senator HATCH. Well, we congratulate you for this opportunity to serve, and congratulate your Senators for supporting your opportunity.

As a district judge, you would be bound to follow precedent laid down by the Supreme Court and by the court of appeals in which you sit. However, you are going to be faced with a lot of cases of first impression through the years. What principles are going to guide you, and what methods would you use to be able to decide those cases of first impression?

Judge PORTEOUS. If there is no Supreme Court precedent, Senator, I would then go to my circuit. Failing precedent from either of those sources, I would look to other circuits to see if they have



had analogous litigation and rendered any particular judgments thereon; likewise look to other district courts to see if they have had any analogous type litigation and judgments thereon.

Failing all that, if it is a question of interpretation of law and the law is clear as written, the process would seem to end at that point in time. And then if there are other questions that require inquiring as to the legislative intent, I would make that inquiry also.

Senator HATCH. Well, that is good. Well, I think that is fine for me.

Senator METZENBAUM. Thank you very much, Senator Hatch.

Thank you very much, and we look forward to seeing if we can't expedite your confirmation.

Senator HATCH. We will sure try.

Judge PORTEOUS. Mr. Chairman and Senator Hatch, thank you.

Senator METZENBAUM. I see Delegate Eleanor Holmes Norton, one of the most respected colleagues we have over on the other side in the House, and one who is constantly providing a leadership role in our community, and a good friend.

Would you like to present Mr. Robertson?

**STATEMENT OF HON. ELEANOR HOLMES NORTON, A  
DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Delegate NORTON. Thank you very much, Mr. Chairman. It is my great pleasure to recommend to you James Robertson to be a judge on the U.S. District Court for the District of Columbia. I recommended Mr. Robertson after he was recommended to me in a list of very distinguished lawyers by my 17-member judicial commission.

Mr. Robertson is an especially distinguished lawyer in the District of Columbia. He is a deeply experienced litigator and a past president of the District of Columbia Bar, but Mr. Robertson has refused to live his professional life solely within the private bar. Early in his career, he was staff director for the Lawyers Committee for Civil Rights Under Law. Throughout his professional life, he has been a leader of the private bar in every relevant respect, including a leader of the pro bono bar, setting an example for how the private bar should involve itself in the lives of the people of this city.

As you are aware, the U.S. District Court for the District of Columbia is already a very distinguished court. I believe it will shine brighter with the addition of Mr. Robertson. I am here, therefore, this morning to strongly recommend him to you.

Thank you very much, Mr. Chairman.

Senator METZENBAUM. Thank you very much, Ms. Norton, and I think we will proceed forward through the hearing with respect to Mr. Robertson.

Mr. Robertson, would you be good enough to stand, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Mr. ROBERTSON. I do.

Senator METZENBAUM. Mr. Robertson, do you have an opening statement?

**TESTIMONY OF JAMES ROBERTSON, ROCKVILLE, MD, TO BE  
U.S. DISTRICT JUDGE FOR THE DISTRICT OF COLUMBIA**

Mr. ROBERTSON. Well, she has left the room so she won't hear it, Mr. Chairman, but I would to thank Congresswoman Norton and to express my admiration for her role in bringing judicial selection in the District of Columbia to the District of Columbia through herself and her judicial nominations commission, and I am very proud to be one of her recommended persons to this committee.

I would also like to acknowledge and to introduce my wife, Berit Robertson, who is here. And a number of people from my law firm are here, but most notably I would like to acknowledge the presence of Mr. John Pickering, who has been a mentor of mine for many years and a very valuable one.

Senator METZENBAUM. We are happy to have you with us, sir.

Do you have anything further you would care to offer as a personal comment?

Mr. ROBERTSON. Only a statement of personal pride and gratitude for being where I am, Senator, and a commitment to do the best I can if I am confirmed.

**QUESTIONING BY SENATOR METZENBAUM**

Senator METZENBAUM. Mr. Robertson, I noticed in looking at your vitae that your practice involved products liability and insurance coverage. I would guess a 100-percent defendant side in those cases?

Mr. ROBERTSON. Not a 100 percent, Senator, but in recent years it has been close to that, large—my firm has been mostly on the defense side. I have had the experience of being a plaintiff's lawyer in civil litigation in a number of cases, and I must say I have enjoyed that part of it very much as well.

Senator METZENBAUM. Let me ask you, you get a products liability case or a general tort liability case against an insurance company, or whatever, in the district court. Do you think your past experience—as a Senator, I think my past experience has some impact upon my thinking. Do you think, as a Federal judge, your past experience will have some impact?

Mr. ROBERTSON. I hope my past experience has some impact, Senator. I think my experience has been valuable in helping me see both sides of cases. I think if you are on the defense side in civil cases, as I have been most of the time, you must learn pretty quickly to see the plaintiff's side and to find the point where a case can be and should be negotiated to settlement. So I think I have a good deal of experience in that and I hope it has some impact in my work.

Senator METZENBAUM. I gather that you, on a pro bono basis, have been rather active in representing some litigants in civil rights cases. Is my understanding correct, and would you elaborate on that?

Mr. ROBERTSON. Well, Senator, yes. I suppose I have been as active in pro bono litigation as anyone in my firm, with the possible exception of Mr. Pickering, again, who is my mentor in these matters and provided leadership in the firm for this effort. I believe very deeply in the obligation of lawyers to engage in pro bono ac-



tivities with a portion of their time and I have tried to do it all through my career.

Senator METZENBAUM. Were some of those cases civil rights cases?

Mr. ROBERTSON. Yes. I heard the reference to Nate Jones earlier this morning with some pleasure. I was one of the counsel and wrote the lead brief for the NAACP in a case called *NAACP v. Claiborne Hardware*, which turned out to be a landmark Supreme Court civil rights case, and at the hearing I sat with Nate Jones, who was then general counsel of the NAACP and has been a friend ever since.

Senator METZENBAUM. He is an old friend of mine and I was instrumental in his Federal appointments early on, many years ago, when I wasn't a member of the Senate, but had some relationships. I have always held it against him that he was born too soon because if he had been born a little later, we probably could have gotten him on the Supreme Court and he would have been a great Supreme Court Justice.

Mr. ROBERTSON. Perhaps so.

Senator METZENBAUM. Do you have any thoughts as to what the court can do to accelerate and bring up to date the backlog of cases that are in the various courts, and I would guess in the D.C. court as well? I don't know. How current is the D.C. court in its docket?

Mr. ROBERTSON. Well, it is not among the most current, Senator. I am told by my colleagues who have just gone on the bench that they were given from the get-go files, maybe 150 or 200 files, that were given to them by other judges. There is a backlog, of course. All the courts are working on it. The Civil Delay Reduction Act has had a lot—has had a positive effect on that.

It is my own belief that the individual district judge can do a great deal to move cases along by deciding motions and other matters very quickly, by deciding them with a minimum of words and a maximum of speed, by bringing the parties together for pretrial conferences at an early stage, by setting dates and sticking to them. I think those things have quite a remarkable effect in moving litigation forward and I would expect to do that if I were confirmed.

Senator METZENBAUM. Do you think that there ought to be any mandatory pro bono programs that the bar or the courts require of lawyers?

Mr. ROBERTSON. Senator, my personal view on that is that mandatory pro bono would be a mistake. I think it is an obligation for lawyers to engage in pro bono, but there are a number of lawyers, frankly, whose money I would rather have than their time, to be quite honest with you. [Laughter.]

And I should think there are ways of satisfying that obligation that don't necessarily require pro bono service.

Senator METZENBAUM. Thank you. I think I agree with you, I might say.

Mr. ROBERTSON. Thank you, Senator.

Senator METZENBAUM. Senator Hatch.

## QUESTIONING BY SENATOR HATCH

Senator HATCH. Well, Mr. Robertson, I want to congratulate you for your lifetime at the bar and for your service and for this new calling that you are willing to undertake.

Mr. ROBERTSON. Thank you, Senator.

Senator HATCH. I know working for Wilmer, Cutler & Pickering is about as interesting a job as you can have in this town. You have got as many people across the spectrum down there as any place I have ever seen.

I just might ask this. You have been involved in a lot of political things over the past number of years, like most lawyers, but you, in particular, have very strong feelings, and I am aware of those. I think it is essential to the rule of law that judges not act politically, and I will just ask you this one question. Do we in the Senate have your commitment that when you reach this bench you will not allow political considerations to make the decisions for you, but that you will decide these cases impartially and in the best possible legal manner.

Mr. ROBERTSON. You do have my commitment, Senator.

Senator HATCH. That is all I need. We are happy to have you on this list today and we look forward to supporting you and putting you through the Senate today. I hope we can do that.

Mr. ROBERTSON. Thank you very much.

Senator METZENBAUM. Thank you very much, and I think we will be able to——

Mr. ROBERTSON. May I say one more thing, Senator?

Senator METZENBAUM. Surely.

Mr. ROBERTSON. I would like to thank and commend the staff of the Judiciary Committee who have done an enormous amount of work getting me and other people ready to be here, and also a number of people who are here from the Justice Department and the White House, specifically Mary Morgan, Susan Liss, and Victoria Radd, who have put in an enormous amount of time helping me and others get here, and I appreciate it.

Senator HATCH. That is enough pressure right there, you know, just to put it on us. I might also add that you have had some other people who are no longer at the White House very strongly in your favor. Let me just mention Boyden Gray, who certainly would like to see you on the bench. So it is to your credit that you have so many people across the board who support you and who want you in this position. Frankly, I think you will do an excellent job here.

Mr. ROBERTSON. Thank you.

Senator METZENBAUM. Thank you, and I want to personally commend you for your activities in some of those pro bono cases and some of those civil rights cases. I still have a concern on some of those cases and I am just pleased to see a person of your stature from a major firm providing that kind of legal assistance. It is to your credit.

Mr. ROBERTSON. Thank you, Senator.

[A letter to Senator Biden follows:]

WILMER, CUTLER & PICKERING,  
Washington, DC, October 6, 1994.

Hon. JOSEPH R. BIDEN,  
Committee on the Judiciary, U.S. Senate,  
Senate Dirksen Office Building, Washington, DC.

DEAR SENATOR BIDEN: I write to express my appreciation for the hard work of the Judiciary Committee staff in bringing my nomination to such a prompt hearing today, and to express special thanks to Senators Metzenbaum and Hatch for their courtesies extended to me during that hearing.

Although the list of nominees published for today's hearings identified my place of residence as Rockville, Maryland, I am in the process of changing my place of residence to the District of Columbia. That process is not yet complete, but I would be very grateful if the record of my nomination and any resolutions concerning it be written or amended as necessary to indicate that I am "from" the District of Columbia. It is the place I intend permanently to reside, and it certainly is the place where nearly my entire professional career has been spent.

Sincerely yours,

JAMES ROBERTSON.

Senator METZENBAUM. Mr. Beaty, we are going to get to you in just a couple of minutes. I am not sure who you are. If you would raise your hand?

It is no offense, but I don't think I am being fair to my own nominee, Kate O'Malley. She was the first one up. Senator Glenn was here with her, and I didn't go forward with the questions. I wanted to get to some others, but have no fear. Everything is under control.

Kate, will you come up, please? Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Ms. O'MALLEY. I do.

#### QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Ms. O'Malley, some people have argued that when interpreting a statute courts should look only at the language of the law and should not look at the intent of Congress or the legislative history. As a matter of fact, Justice Scalia has been a strong advocate of that point of view.

Do you have any opinion with respect to the propriety of the courts limiting themselves to looking at the language of the law, or do you believe that the courts should also look at legislative history?

#### TESTIMONY OF KATHLEEN M. O'MALLEY, UPPER ARLINGTON, OH, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF OHIO

Ms. O'MALLEY. I understand Justice Scalia's arguments in this regard, but I have to respectfully disagree with him. I believe that legislative history can be very illuminating and can help to guide the courts' decisionmaking with respect to interpretation of the statute. So I think that I would be more aligned with Justice Souter's views with respect to legislative history.

Senator METZENBAUM. Rule 11 of the Federal Rules of Civil Procedure allows judges to impose sanctions against lawyers or parties who file frivolous lawsuits. There has been much debate over the courts' increased willingness to punish litigants and their lawyers, as well, under rule 11. Some lawyers argue that the rule is being applied to chill pursuit of creative arguments in developing areas



of the law, such as civil rights. Others think the rule should be strengthened even further to cut down on frivolous lawsuits.

What do you think of these concerns, and how might you respond to them if confirmed?

Ms. O'MALLEY. I believe that rule 11 does serve a very important purpose, but it can only serve that purpose if, in fact, courts use it as an appropriate tool and use it with appropriate discretion. So I think that, obviously, there needs to be great care in when it is applied, but I think it is a very important tool that should be applied.

Senator METZENBAUM. There has been a great deal of attention paid to Federal courts' increased caseloads and the resulting problem of docket backlog. This backlog has had an adverse impact on the litigants before the court, who have been forced to suffer at least some delay in the resolution of their claims.

If confirmed, what steps will you take to ensure that your docket progresses at as quick a pace as is fair and reasonable?

Ms. O'MALLEY. The Northern District of Ohio is an early implementation district under the Civil Justice Reform Act and has tried a number of measures, including early neutral evaluation and mediation. I believe, however, that a single judge can do many things themselves with their docket to move things along, one of the most important of which is to actually rule on dispositive motions at early stages in the case and to keep discovery disputes to a minimum. I also believe that there could be a much greater and more extensive use of magistrates made by the district judges.

Senator METZENBAUM. Do you think your experience as the administrator of the attorney general's office will benefit you on the bench?

Ms. O'MALLEY. I think it will greatly benefit me. I have had the obligation to oversee the work of over 350 attorneys and about 40,000 pending cases on any given day, and so docket control has become a way of life.

Senator METZENBAUM. I know you are a founding board member of the Ohio Legal Assistance Foundation, and the mission of that foundation is to help provide funding for and determine the appropriate distribution of funds to Ohio's legal aid community.

Would you tell the committee more about the origin of this foundation and your present involvement with its efforts?

Ms. O'MALLEY. Chief Justice Moyer in Ohio put together a committee whose charge was to determine ways to better improve the provision of legal services to the poor in Ohio. The idea was that we might not always be able to depend on the largess of the Federal Government for those purposes and we needed to figure out a way to do it in Ohio.

We proposed and got legislation through to create the Ohio Legal Assistance Foundation, which is an independent, nonprofit corporation whose goal both is to raise funds from private sources and to convince the Ohio Legislature that there are certain appropriate sources of funding in addition to the IOLTA programs. The founding board has begun now to put together a program and a strategy with respect to how to run that board and how to increase services to the poor in Ohio.

Senator METZENBAUM. Thank you very much.

Senator Hatch.

# QUESTIONING BY SENATOR HATCH

Senator HATCH. Well, I welcome you to the committee and congratulate you on this opportunity to serve.

Ms. O'MALLEY. Thank you, Senator.

Senator HATCH. In your answers to questions you do say that "I have also supervised the office's handling"—you are talking about the attorney general's office down there—"the office's handling of habeas corpus matters and of death penalty appeals. I have also been actively involved in the efforts of the National Association of Attorneys General to reach a consistent position on Federal habeas corpus reform, the Racial Justice Act, and other aspects of the Federal crime bill. Finally, I am ultimately responsible for overseeing the office's criminal investigations and crime-related legislative initiatives."

Have you ever reached a consensus on the Racial Justice Act?

Ms. O'MALLEY. The National Association of Attorneys General actually did take a position and there was a resolution passed both at the spring meeting and again at the summer meeting of the National Association of Attorneys General opposing the Racial Justice Act in its current form and asking, at least, that the crime bill go forward without the Racial Justice Act as a part of it.

The concerns of the attorneys general on a nationwide basis were that the act and its reliance on statistics could create more delays in the death penalty appeals process rather than to increase finality and fairness, which is the ultimate goal.

Senator HATCH. Did you agree or disagree with the attorneys general resolution?

Ms. O'MALLEY. In Ohio, in fact, we joined the resolution. The attorney general in Ohio has always been supportive of equal justice measures and of making sure that the death penalty is not improperly or unfairly applied, but the Racial Justice Act as it was currently drafted was of great concern to our office.

Senator HATCH. Okay, thank you. I want to commend you and we will do everything we can to get you through.

Ms. O'MALLEY. Thank you.

Senator HATCH. I think we should keep moving here. Let's see if we can finish them before we go vote, OK?

Senator METZENBAUM. Very good.

Thank you very much, Ms. O'Malley.

Ms. O'MALLEY. Thank you, Senator.

Senator METZENBAUM. I think we are going to try to expedite your confirmation. In fact, we are going to try to expedite this hearing because Mr. Mandela is addressing a joint session of the Congress in a very short time. So you are excused, and thank you for being with us.

Ms. O'MALLEY. Thank you, Senator.

Senator METZENBAUM. Mr. Beaty, we will have you come forward.

Do you solemnly swear to tell the truth, the whole truth and nothing but the truth, so help you God?

Judge BEATY. I do, sir.

Senator METZENBAUM. Thank you.



Senator HATCH. Senator Metzenbaum, if I could, in regard to Judge Beaty, we welcome you, Judge Beaty, who has been nominated to be on the Federal District Court for the Middle District of North Carolina.

Senator Helms had planned to appear before the committee to introduce you. He asked me to make this statement. However, inasmuch as Judge Beaty was placed on our agenda for today's hearing only this morning, Senator Helms was unable to get out of a prior commitment and make his way over here, so he feels badly about that.

He did ask me to thank the committee for its prompt handling of this nomination and would like consent to have a statement on behalf of Judge Beaty included in the record in this hearing.

[The prepared statement of Senator Helms follows:]

PREPARED STATEMENT OF HON. JESSE HELMS, A U.S. SENATOR FROM THE STATE OF NORTH CAROLINA

Mr. Chairman, I appreciate your providing me this opportunity to pay my respects to the Honorable Jim Beaty, whom the President has nominated to serve as a Federal District Court Judge for the Middle District of North Carolina.

While I had never met Judge Beaty prior to President Clinton's nominating him for this judgeship, I began checking on him, and Mr. Chairman, once I learned that Judge Beaty had been appointed to serve as Superior Court Judge by both Governor Hunt, a Democrat, and by his Republican successor, Governor Martin, I concluded that this was not your average judicial nominee.

Just the same, I made inquiries about him among numerous legal scholars and leading attorneys in North Carolina. Everyone with whom I spoke gave Judge Beaty high marks.

Shortly after the White House notified me of the President's intent to nominate Judge Beaty, I reviewed his rulings in a number of cases that he presided over as a Superior Court Judge in North Carolina. My distinct impression is that Judge Beaty is the kind of judge who applies the law *as it is written*, and rules on the facts as they are presented—which is precisely the assessment I heard most frequently from the attorneys whom I consulted about Judge Beaty.

Each of you has before you a biography of Judge Beaty, and I will not elaborate on it now. But I will say that for a young man, he has achieved a great deal. What may not come across from his resume, however, is the fact that his judicial temperament has led to his having been frequently assigned the duty of sitting on capital cases and cases involving public corruption.

I will also say, however, that when I did get an opportunity to meet with Judge Beaty a month or so ago, I instantly liked him, and I was most encouraged by his commitment—which he elaborated upon in his response to the Judiciary Committee questionnaire—to fulfill the role of a Federal judge as it was envisioned by our Founding Fathers.

With that, I am honored to present this nominee to the Committee and I hope his nomination can be handled expeditiously.

Senator HATCH. Frankly, Senator Metzenbaum, I don't think I have to ask this nominee any questions. I am prepared to support him all the way through, and do it in a vigorous manner.

Senator METZENBAUM. Thank you, Senator Hatch.

Judge Beaty, do you have any opening statement you care to make?

TESTIMONY OF JAMES A. BEATY, JR., WINSTON-SALEM, NC, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

Judge BEATY. No opening statement, Senator, other than to thank you for the opportunity to be here and also to recognize my wife who is with me today, Toy. My son could not be here. He is

off in school at the School of Science and Math in Durham, NC. Other than that, thank you for being here.

#### QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. Thank you, and let me just ask you one question. You have been a State court judge for 13 years. Before that, you were an active litigator for a number of years. Given your background and prior experience, please speak about the role and significance of judicial temperament and indicate what elements of this temperament you consider the most important.

Judge BEATY. Senator, judicial temperament certainly is very important. I have tried to make that one of the guiding lights of my service as a judge to make sure that everyone has an opportunity to be heard. As a part of that is included a great deal of patience. Having a listening ear and a great deal of patience—I think carrying that into any judiciary is certainly most important for judicial temperament.

Senator METZENBAUM. Mr. Beaty, there is a cloture vote on at this moment and Senator Hatch and I have an obligation to get there, but we also have an obligation to hear from Judge Briones. I think you are well on your way. I think the pressures of time are working in your favor, not against you, so we will excuse you and go forward with Judge Briones, but we are going to make every effort to confirm you before we conclude this session.

Thank you very much.

Judge BEATY. Thank you, Senator. Thank you, Senator Hatch.

Senator HATCH. It almost seems a waste of time coming up here, doesn't it?

Judge BEATY. Never a waste of time. Thank you for yours.

Senator HATCH. We are always glad to hear that.

Senator METZENBAUM. Not too bad.

Senator HATCH. You did great.

Senator METZENBAUM. Mr. David Briones? Are you a sitting judge?

Judge BRIONES. Yes, I am, Senator.

Senator METZENBAUM. I would like to swear you in.

Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Judge BRIONES. I do.

Senator METZENBAUM. Do you have an opening statement, Judge Briones?

#### TESTIMONY OF DAVID BRIONES, EL PASO, TX, TO BE U.S. DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS

Judge BRIONES. Just a very brief one, Senator. First of all, I would like to thank Kay Bailey Hutchison for showing up and speaking for me this morning, especially due to the fact that I was recommended by her predecessor. I do appreciate her, and Senator Gramm's office has also been very helpful.

I do want to introduce my wife, Delia, here with me today.

Senator METZENBAUM. We are happy to have you with us.

Judge BRIONES. I am very honored to be here, Senator, and I am ready to answer whatever questions you might have.

## QUESTIONING BY SENATOR METZENBAUM

Senator METZENBAUM. You, sir, have served as a State court trial judge, and before that you had an active law practice as a litigator. Given your background and prior experience, give me your thoughts concerning the role and significance of temperament for judges and indicate what elements of temperament you consider the most important.

Judge BRIONES. Senator, I think my 3 years on the bench have showed me a great deal about temperament, and I agree with the judge just before me who stated that you have to have a lot of patience sometimes, and I have grown to have a lot of patience.

In my over 20 years' experience as an attorney, I have seen examples of what I don't want to become, and I made a pledge when I became a judge that I would be respectful, and I think that is the main thing, to the litigants, respectful to anybody that comes before my court, and patience. That is what I feel.

Senator METZENBAUM. Do you have any strong feeling one way or the other with respect to the secrecy orders that some courts have imposed upon settlements?

Judge BRIONES. Yes, Senator. I have grave reservations about secrecy orders. In Texas, we have great restrictions against secret orders, and I think the philosophy follows through—will follow with me in Federal court. I think only in extreme cases should the files be closed, Senator.

Senator METZENBAUM. Senator Hatch.

Senator HATCH. Well, we welcome you, Judge Briones, and we are pleased to support your nomination. Both of your Senators are behind you, and I think that speaks very well of you, but we would have supported you regardless. We think it is a wonderful opportunity for you and your family, and all we ask is that you do so with impartiality.

I think the most important statement you have made here this morning is that you practiced law long enough to know what you don't want to be. Having tried a lot of cases in court myself in the past, I understand exactly what you are saying. I am interpreting it that you are not going to try the cases of litigants for their attorneys. You are not going to tell them how to do it. You are going to help them and assist them, but not be intrusive.

Judge BRIONES. That is correct, sir.

Senator HATCH. To me, that is very important, plus be impartial in every way and try to see that every opportunity is given for a fair result. If you do that, you will become a great Federal judge, and that is all we can expect of you.

So we want to commend you for having this opportunity, for being in a position to be called to this opportunity, and we will do everything we can to get you through here.

Judge BRIONES. You have my commitment, Senator.

Senator HATCH. Thank you.

Judge BRIONES. Thank you.

Senator METZENBAUM. Thank you very much, Judge Briones.

That will conclude our hearing this morning.



**STATEMENT OF HON. BOB LIVINGSTON, A REPRESENTATIVE  
IN CONGRESS FROM THE STATE OF LOUISIANA**

Representative LIVINGSTON. Senator, excuse me. I am Bob Livingston, a Congressman from Louisiana, and I just wanted to put in my two cents a little belatedly for Judge Tom Porteous. He has already been through the process here and I hope that you will give him good marks. I have known him for 25 years, and he is a fine and upstanding jurist and lawyer, a great representative of bar, as is Okla Jones, who I understand is also before you this morning from Louisiana.

So I apologize for interrupting your schedule and apologize for being late, but I wanted to take this opportunity to say that they are good, fine people.

Senator METZENBAUM. We are very, very happy to have you with us.

Senator HATCH. We are honored to have you here.

Senator METZENBAUM. Thank you for coming over and indicating your support, and it is certainly very meaningful to this committee. Thank you, Congressman. It means a lot.

Senator HATCH. Thanks, Congressman Livingston. We appreciate your coming.

Senator METZENBAUM. With that, this hearing stands adjourned. [Whereupon, at 10:17 a.m., the committee was adjourned.]

[Submissions for the record follow:]

## SUBMISSIONS FOR THE RECORD

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)  
Thomas Banister Russell
2. Address: List current place of residence and office address(es).  
  
Home: 3575 Sherwood Road  
Paducah, KY 42001  
  
Office: Whitlow, Roberts, Houston & Russell  
300 Broadway  
P.O. Box 995  
Paducah, KY 42002-0995
3. Date and place of birth.  
November 15, 1945, Louisville, Kentucky
4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
  
Mary Phyllis Baird Russell, Teacher's Aide, Paducah Board of Education, 401 Walter Jetton Boulevard, Paducah, Kentucky, 42001
5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.  
  
Western Kentucky University  
1963-1967  
Major - English  
Minor - History  
B.A. degree  
June, 1967  
  
University of Kentucky  
College of Law  
1967-70  
J.D. degree  
May 11, 1970



6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

I was an associate with Waller, Threlkeld & Whitlow from 1970 until 1975 in Paducah, Kentucky. The firm name changed and I became a partner in the successor firm of Threlkeld, Whitlow & Roberts in 1975. I remained a partner in the successor firm of Whitlow, Roberts, Houston & Russell until present.

Since 1970, I have been a partner in the Old National Bank Building Partnership. This partnership owns a building we lease to my law firm. My partners are three of my law partners.

Approximately seven years ago, the Kentucky Bar Association formed a captive malpractice insurance company, Lawyers Mutual Insurance Company of Kentucky (LMICK), to guarantee availability of insurance and stability of premiums to Kentucky lawyers. All Kentucky lawyers had received a significant increase in premiums. The KBA could not find any reasons to justify this increase by the major companies. I have served as an uncompensated, volunteer officer of LMICK from 1987 until present.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

I have not served in the military.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

University of Kentucky College of Law  
Managing Editor, Kentucky Law Journal  
Graduated with High Distinction  
Order of the Coif  
Ranked 2nd in class of 1970

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

Kentucky Bar Association  
Co-Chair Kentucky Task Force on Gender Fairness in the Courts 1989-91  
Chair ADR Committee 1983-84  
Chair Insurance and Negligence Section 1982-83

Board of Governors 1982-93  
 President 1991-92, President-Elect 1990-91 and Vice  
 President 1989-90  
 Vice-President, Kentucky Young Lawyers Section 1977-78  
 Outstanding Chair, Kentucky Young Lawyers Section  
 1975-76

American Bar Association:

Chair, Automobile Law Committee, Tort and Insurance  
 Practice Section 1983-84  
 Chair, Public Relations Committee, Tort and Insurance  
 Practice Section 1987-89  
 Member, Long Range Planning Committee, Tort and  
 Insurance Practice Section 1988-89 and 1991-92  
 Program Chair, Midyear Convention, Tort and Insurance  
 Practice Section 1991-92

Kentucky Bar Foundation, Board of Directors 1993-present  
 International Association of Defense Counsel 1989-present  
 American Board of Trial Advocates 1990-present  
 American Bar Foundation 1988-present  
 McCracken County Bar Association, President 1989-90  
 Federation of Insurance and Corporate Counsel 1983-present  
 Kentucky Defense Counsel, President 1987-88  
 American College of Trial Lawyers, Fellow 1991-present  
 Speaker at legal seminars for ABA, KBA, University of  
 Kentucky College of Law, University of Louisville College  
 of Law, Salmon P. Chase College of Law, Murray State  
 University, Western Kentucky Legal Services, Kentucky  
 Academy of Trial Attorneys and Western Kentucky Paralegal  
 Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I belong to several professional associations. Some of these may be involved in lobbying efforts. If they are, I am not aware of it, nor am I involved in it.

I belong to the following additional organizations:

Paducah Rotary Club, President 1980-81, Board of  
 Directors 1977-81  
 McCracken County Red Cross, Chair 1979-81  
 Broadway United Methodist Church 1971-present  
 Nautilus Racquet & Swim Club approximately 1984-present

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Kentucky  
1970

U.S. District Court  
Western District of Kentucky  
1971

U.S. Court of Appeals for the Sixth Circuit  
1984

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

1. "Obscenity - Need for Reform," 57 Ky. L.J. 582 (1969)
2. Ky - Civil Practice Handbook, Chapter 9, "Other Pleading Issues," (1989 & 1991 supplement)
3. "Report of Kentucky Task Force on Gender Fairness in the Courts." I was co-chair of that task force. An editor was employed to prepare a report of the work of that task force. The task force members reviewed the report but the editor did most of the preparation from information provided by the task force.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent, July 1994

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your

substantive ~~or~~ procedural rulings; and (3) constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No

2. whether you practiced alone, and if so, the addresses and dates;

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

I was an associate with Waller, Threlkeld & Whitlow, 5th Floor, Citizens Bank Building, P.O. Box 995, Paducah, Kentucky from 1970 until 1975. The firm name changed and I became a partner in the successor firm of Threlkeld, Whitlow & Roberts, 5th Floor, Citizens Bank Building, P.O. Box 995, Paducah, Kentucky in 1975. I remained a partner in the successor firm of Whitlow, Roberts, Houston & Russell, 300 Broadway, P.O. Box 995, Paducah, Kentucky until present.

I have been an officer and director of Lawyers Mutual Insurance Company of Kentucky, Starks Building, Louisville, Kentucky, since 1987. Please see answer to question 6 above for more explanation.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

From 1970 until 1975, I had a general practice. I was involved in criminal and civil litigation, document preparation, estate planning and administrative and real estate law. Since 1975, my practice has increasingly been limited to civil litigation. Most of this litigation has involved the defense of personal injury actions. Some of the practice has involved plaintiff's personal injury work.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

The majority of my clients have been individual and corporate defendants in civil actions, insurance companies, sole proprietorships and some police departments. I have also represented several plaintiffs in personal injury claims. My specialty has been civil litigation.

The subject areas of this litigation have included contract disputes, automobile accidents, products liability, medical malpractice, legal malpractice, slip and fall, 42 U.S.C. § 1983 claims and declaratory judgment actions.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have appeared frequently throughout my career. The number of trials has decreased slightly over the years due to crowded court dockets and active use of alternative dispute resolution. These two factors have also increased the number of cases settled.

2. What percentage of these appearances was in:

- (a) federal courts;

Twenty percent, approximately

- (b) state courts of record;

Seventy-five percent



- (c) other courts.

Five percent before Administrative Law Judges  
in workers' compensation claims

3. What percentage of your litigation was:

- (a) civil;

Ninety-eight percent

- (b) criminal.

Two percent

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I do not have records, but my estimate is well over two hundred cases in which I was sole counsel.

5. What percentage of these trials was:

- (a) jury;

Ninety-eight percent

- (b) non-jury.

Two percent

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, address, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

# 1

Style: Wanda Elaine Mock v. J. Thomas Giannini, M.D. and J. Thomas Giannini, M.D., P.S.C

Summary: Plaintiff alleged that a general surgeon was negligent in failing to diagnose a ruptured appendix. Plaintiff was hospitalized five days before a diagnosis was made and by that time the appendix had ruptured causing a life threatening condition. Plaintiff incurred substantial medical bills.

Significance: This was a hard-fought case. Plaintiff's only offer to settle was for a substantial sum. Defendant was firm in wanting to defend. The surgeon's involvement in the case was minimal. He saw the patient in the emergency room and provided essentially pro bono service to her.

Nature of Participation: I represented the general surgeon who was sued. I was solely responsible for the defense of this action. I prepared all pleadings, discovery and research. There were several lay witnesses and four or five expert witnesses to prepare for trial and to cross-examine at trial. I tried the case from voir dire through closing statement.

Final Disposition: After a five-day trial, the jury returned with a verdict for defendant.

- a. Date of Representation: 2/87 - 11/90
- b. Court/Judge: U.S. District Court, Western District of Kentucky, Paducah Division, Civil Action No. C87-0049P(CS), Hon. Charles Simpson
- c. Attorney for Plaintiff: Theodore L. Mussler, Jr., Esq.  
1700 One Riverfront Plaza  
Louisville, KY 40202  
(502) 583-1700

# 2

Style: Edward R. Detuncq v. Russell P. Clifton and A.N. Webber Trucking

Summary: Plaintiff suffered serious personal injury when his vehicle collided with a semi-truck. Plaintiff testified that the semi pulled into his lane. The semi driver indicated that he did not observe plaintiff prior to pulling onto the main road. There was proof that plaintiff had been drinking.

Significance: Plaintiff had substantial medical bills, but had been drinking. This case represents a community's intolerance of intoxicated drivers.

Nature of Participation: I represented the driver of the semi and the owner of the semi in the preparation and at the trial. I prepared all pleadings and discovery. I performed all trial preparation work and all legal research. I tried the case which included all examination of witnesses and opening and closing statements. I was sole counsel for defendants.

Final Disposition: Verdict for the defendants.

- a. Date of Representation: 9/83 - 9/85
- b. Court/Judge: U.S. District Court, Western District of Kentucky, Paducah Division, Civil Action No. C83-0270-P(J), Hon. Edward H. Johnstone
- c. Attorney for Plaintiff: Karen Scent, Esq.  
Sanderson & Scent  
P.O. Box 1095  
Paducah, KY 42002-1095  
(502) 443-9600

# 3

Style: Higdon Food Service, Inc. and Kentucky Foods Corporation  
(A Wholly Owned Subsidiary of Higdon Food Service, Inc.)  
v. Gene Walker and Kesterson Meat Company, Inc.

Summary: This was a suit to enforce a noncompete covenant as contained in an employment agreement. It was a case of first impression in Kentucky as to the validity of a noncompete covenant executed after defendant had been an employee for several years. Defendant had been a long-term employee of plaintiff. The plaintiff had developed a unique program for pricing its product. A competitor employed defendant to service the same customers that defendant had been serving for plaintiff. Defendant left plaintiff's employment and took the proprietary information and customer list. The suit was to enforce a noncompete agreement signed by defendant. The agreement covered a limited territory and was limited in duration to one year. Suit was against the prior employee and defendant's new employer.

Significance: Case of first impression in Kentucky.

Nature of Participation: I represented the plaintiffs, who sought to enforce the noncompete agreement. I prepared all pleadings and did the trial preparation. I did all research and presented the oral argument before the Kentucky Court of Appeals and the Kentucky Supreme Court. I wrote all briefs filed with those appellate courts.

Final Disposition: The Trial Court ruled for plaintiffs. This was reversed by the Kentucky Court of Appeals. Discretionary review was granted by the Kentucky Supreme Court and that Court affirmed the Trial Court's decision to uphold the noncompete agreement. Higdon Food Service, v. Walker, Ky., 641 S.W.2d 750 (1982)

- a. Date of Representation: 6/81 - 1/83
- b. Court/Judge: McCracken Circuit Court, Civil Action No. 81-CI-161, Hon. J. Brandon Price
- c. Attorney for Defendants: John T. Reed, Esq.  
P.O. Box 1725  
Paducah, KY 42002-1725  
(502) 444-6330

# 4

**Style:** Adam Whitten, an infant by and through his next friend, William Whitten v. Jeana Cope, Johnny Cook, Donna Cook, Yamaha Motor Corporation, U.S.A., and Yamaha Motor Company, LTD.

**Summary:** Plaintiff, a twelve year old boy, was riding an all-terrain motor vehicle (ATV) when he was struck by a car driven by Jeana Cope. The ATV was manufactured by Yamaha Corporation. Yamaha, the owner of the ATV, and Jeana Cope, driver of the automobile which struck the ATV, were sued. Eventually all claims were dismissed except for the claim against Cope.

Plaintiff had severe injuries and almost lost his foot. The foot was saved after multiple surgeries. He was left with restricted use of the affected leg. His medical bills exceeded \$200,000. Mrs. Cope had minimum liability limits of \$25,000. On motion of defendant, the trial was bifurcated with a trial on the issue of liability to be held first.

**Significance:** Plaintiff had significant injuries. My client had minimum coverage. In light of medical bills of \$200,000, any judgment against my client would have devastated my client who was married with two small children.

**Nature of Participation:** I represented defendant Jeana Cope in trial preparation and at the jury trial. I prepared all pleadings and discovery. I performed all research and filed all motions. I tried the case from beginning to conclusion.

**Final Disposition:** Verdict for Defendant, Cope.

a. **Date of Representation:** 12/87 - 7/91

b. **Court/Judge:** Fulton Circuit Court, Civil Action No. 87-CI-147, Hon. W.L. Shadoan



C. Attorney for Defendants, Johnny Cook and Donna Cook:  
Ben S. Fletcher, III, Esq.  
Fletcher, Cotthoff & Willen  
P.O. Box 1107  
Hopkinsville, KY 42240  
(502) 885-7671 and

J. Daniel Kemp, Esq.  
Dixon & Kemp  
P.O. Box 648  
Hopkinsville, KY 42240-0648  
(502) 886-8272

Attorney for Defendants, Yamaha:  
Gerald R. Toner, Esq.  
O'Bryan, Brown & Toner  
1500 Starks Building  
Louisville, KY 40202  
(502) 585-4700

Attorney for Plaintiffs: Kenneth R. Haggard, Esq.  
P.O. Box 4037  
Hopkinsville, KY 42241  
(502) 885-1417

# 5

Style: Jane Carrell and George Carrell v. Paul H. Price, Jr., M.D. and Kim and Price, P.S.C

Summary: Defendant, a gynecologist, performed a bilateral oophorectomy (removal of both ovaries) on plaintiff. The next morning it was discovered that urine was being extracted through the hemovac, indicating that urine was leaking into the abdomen. After consultation with a urologist, exploratory surgery was performed the same day. The surgery revealed that plaintiff's ureter had been severed in the original operation. Plaintiff sued the gynecologist for medical malpractice. Plaintiff had substantial medical bills and lost wages.

Significance: The defendant doctor admitted a mistake. It was difficult to convince the jury that mistakes can be made and not be malpractice.

Nature of Participation: I represented the gynecologist and his practice group. I prepared all pleadings, conducted all discovery and the cross-examination of expert witnesses and all preparation of pretrial motions. In addition, I personally conducted all direct and cross-examination and argument at trial.

Final Disposition: After several days of trial, the jury returned a verdict in favor of my client, finding that my client was not negligent.

- a. Date of Representation: 7/88 - 10/90
- b. Court/Judge: McCracken Circuit Court, Civil Action No. 88-CI-543, Division II, Hon. Ron Daniels
- c. Attorney for Plaintiff: Kevin George, Esq.  
700 Republic Building  
429 W. Muhammad Ali Boulevard  
Louisville, KY 40202  
(502) 569-2727

# 6

**Style:** Carolyn Hester, Mother and Administratrix of Edward W. Thompson, a Deceased Minor, and Louis Thompson, Father of Edward W. Thompson v. Bradley E. Neal, a Minor

**Summary:** Plaintiff's decedent was a passenger in a vehicle driven by defendant. They were involved in a one-car accident resulting in the death of plaintiff. Defendant had two policies of insurance. One provided initial coverage of \$100,000. The other provided \$50,000 in excess liability coverage.

A wrongful death suit was filed on behalf of the deceased passenger. The parents also brought a claim for loss of love and affection of their minor son.

The claim exceeded the policy limits of defendant. We persuaded the primary carrier to pay \$100,000 to plaintiffs. The case was tried and the parties agreed the judgment could not exceed the excess policy limits of defendant.

**Significance:** Negotiations prior to trial limited the exposure to defendant. Plaintiff and defendant had been drinking. It gave the community an opportunity to comment on drinking and driving and the culpability of a passenger who also had been drinking.

**Nature of Participation:** I represented defendant at all stages. I prepared all pleadings, all research, all motions and all discovery. I tried the entire case from beginning to end.

**Final Disposition:** The jury apportioned fault at fifty percent to plaintiff's decedent and fifty percent to the defendant and awarded the estate \$0 for destruction of decedent's power to earn money, the funeral bill, and \$50,000 for loss of love and affection.

Plaintiff appealed and the claim was settled for \$10,000 to avoid further cost. This essentially represented a victory for the defendant.

a. **Date of Representation:** 5/89 - 8/91

b. **Court/Judge:** McCracken Circuit Court, Civil Action No. 88-CI-511, Hon. J. William Graves

c. Attorney for Plaintiff: Craig Housman, Esq.  
Housman & Sparks  
P.O. Box 1196  
Paducah, KY 42002-1196  
(502) 444-6644

# 7

**Style:** Robert Farris v. William Martin, Jr. and William Martin, Jr., Agent for the Lola Pentecostal Church Incorporated, A Kentucky Corporation

**Summary:** Plaintiff was injured when a vehicle he was driving was struck by an old church bus which plaintiff claimed crossed the center line and struck his vehicle. The bus did not stop. Plaintiff alleged that the accident happened at night and the bus did not have its lights working properly.

The bus driver admitted that the lights on the bus did not work but he did not remember striking plaintiff's vehicle. There were two passengers in plaintiff's vehicle to corroborate his story. Plaintiff claimed substantial personal injury.

**Significance:** This case was tried in a rural Kentucky county. A judgment against this local church would have had widespread significance. This was an alleged "hit & run" accident. The church members all felt their credibility was at stake.

**Nature of Participation:** I represented the driver of the church bus and the church. This included preparation of all pleadings and discovery, expert witness preparation and legal research. I conducted voir dire, opening argument, direct and cross-examination of witnesses and closing argument.

**Final Disposition:** Verdict for the driver of the bus and the church.

- a. **Date of Representation:** 1/90 - 5/91
- b. **Court/Judge:** Livingston Circuit Court, Civil Action No. 90-CI-005, Hon. Willard B. Paxton
- c. **Attorney for Plaintiff:** Mark Edwards, Esq.  
Megibow & Edwards  
P.O. Box 1676  
Paducah, KY 42002-1676  
(502) 442-0121



# 8

Style: Casey v. Metcalf, M.D.; et al.

Summary: This was a wrongful death claim alleging medical malpractice against a neurologist and pulmonologist. It was alleged that the defendants failed to properly treat a pulmonary embolism. Plaintiff made no settlement offer prior to trial.

Significance: Medical malpractice cases are difficult to defend. This case was practiced by excellent attorneys on all sides. A defense verdict in medical malpractice cases is becoming rare.

Nature of Participation: I represented the defendant neurologist at the trial. This included preparation of pleadings, taking of all discovery and performing all legal research. The case involved several witnesses. I prepared all witnesses for trial. I tried the case from voir dire through closing argument.

Final Disposition: After a five-day trial, the jury returned with a verdict for the neurologist and pulmonologist.

a. Date of Representation: 3/90 - 6/92

b. Court/Judge: McCracken Circuit Court, Civil Action No. 90-CI-257, Hon. Ron Daniels, McCracken Circuit Court Judge, Division II

c. Attorney for Defendant, Jeffrey S. Clarke, M.D.:  
Jonathan Freed, Esq.  
Boehl Stopher & Graves  
340 Executive Inn  
Paducah, KY 42001  
(502) 442-4369

Attorney for Plaintiff: Len W. Ogden, Jr., Esq.  
228 North 9th Street  
Paducah, KY 42003-1709  
(502) 444-0232

# 9

Style: Shaw v. Collom, et al.

Summary: Katy Belle Shaw was a single seventy-six year old retired school teacher who lived with her eighty-eight year old sister. She suffered a broken hip when an automatic door at a grocery store allegedly malfunctioned. No offer of settlement was made until mid-way through plaintiff's proof at trial, at which time the case was settled for \$140,000. Until that time, defendant had denied liability.

Significance: Plaintiff was bed-ridden and had essentially been mistreated by a grocery store chain. She was given her day in court and prevailed. No offers of settlement were made until mid-way through the trial.

Nature of Participation: I was lead counsel. I represented plaintiff. I prepared all pleadings. I took all discovery and did all legal research. I prepared the case for trial, tried the case and negotiated the settlement. Co-counsel was present at the trial but did not participate.

Final Disposition: Settlement for plaintiff of \$140,000.

- a. Date of Representation: 11/90 - 1/93
- b. Court/Judge: Hickman Circuit Court, Civil Action No. 90-CI-061, Hon. W.L. Shadoan
- c. Attorney for Defendant: Stephen B. Lee, Esq.  
P.O. Box 363  
Owensboro, KY 42302  
(502) 926-1345

# 10

**Style:** James A. Fackler, III, a minor, who sues by and through his mother and next friend, Linda Fackler v. James Brazil, M.D.

**Summary:** Plaintiff was treated in the emergency room by Dr. Brazil. After plaintiff returned home, it was discovered that he had a torn quadriceps tendon. Plaintiff was hospitalized, treated for a major infection and the tendon was repaired. The tendon tear was not diagnosed by Dr. Brazil. Plaintiff sued Dr. Brazil for medical malpractice.

**Significance:** Dr. Brazil felt strongly that he did not commit malpractice. He is a local physician who performs a great deal of pro bono work in this rural community. For Dr. Brazil, this case was very significant.

**Nature of Participation:** I represented defendant, Dr. Brazil at all stages of the trial. I did all discovery, research and witness and trial preparation. The case involved the examination of five expert witnesses and I performed examination of each on behalf of my client. I handled all aspects of the week-long trial from beginning to end.

**Final Disposition:** The jury returned a verdict for the defendant. The case is not final as plaintiff has filed an appeal. Trial was in December of 1993. The case has not been assigned for oral argument at this time.

- a. **Date of Representation:** 4/91 - present (on appeal)
- b. **Court/Judge:** Trigg Circuit Court, Civil Action No. 91-CI-038, Hon. William Cunningham
- c. **Attorney for Plaintiff:** Michael Hance, Esq.  
Franklin & Hance, P.S.C.  
505 West Ormsby Avenue  
Louisville, KY 40203  
(502) 637-6000

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

I had the privilege of serving as President of the Kentucky Bar Association. During that period, there were two legal activities in which I took great pride and I felt were significant.

Immediately before my term, I was Co-Chair of the Gender Bias Task Force. The task force was an exceptional group that traveled the state and held public hearings to determine if there was bias within our court system. We not only examined gender bias within the profession, but also considered it from the viewpoint of litigants involved in the system.

These public hearings and the hard work of sub-committees resulted in a report which was delivered to and acted upon by our state bar.

I also had the honor of naming Jennifer Coffman (now U.S. District Judge, Eastern District of Kentucky) as the first female chair of our annual State Convention.

During my year as President of the Kentucky Bar Association, we also undertook a review of the legal discipline system of the association. I was actively involved in making recommendations to our Supreme Court for revisions in our current system. The recommendations centered on increasing lay involvement and developing greater public confidence in the procedure. This was a major project. Proposed rules have been sent to the Kentucky Supreme Court.

I was appointed to the Rules of Evidence Committee of the KBA. This committee met for about a year and drafted formal Rules of Evidence patterned almost entirely from the Federal Rules of Evidence. These Rules of Evidence have now been adopted by the Kentucky Supreme Court and the Kentucky Legislature.

In my private practice, I specialize in litigation. I have confidence in our jury system. However, I know it is not perfect. I also am aware that not all controversies require the time and expense of a jury trial. I have led an effort to implement the use of alternative dispute resolution in my area. I also was involved in the first summary jury trial in U.S. District Court, Western District of Kentucky.

My other non-litigation pursuit has been my active role in addressing local bar associations to persuade the members to engage in pro bono activity.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Through my law partnership, I have a profit sharing plan of \$113,000 which also contains a \$100,000 life insurance policy. Upon confirmation, I will roll this plan over to a personally managed account.

I will close out my law partnership by payment to me of my capital account of \$31,000 and my pro-rated share of the firm's annual profits as of the date of my termination of the partnership. The pro-rated share of the profits is paid at the end of the year. The capital account can be paid in three equal annual installments with the first being due one year from the date of my withdrawal from the partnership.

I also am a partner in the Old National Bank Building Partnership. I will receive one-fourth of the fair market value of the building after deducting the debt. The building should have a fair market value of approximately \$475,000.00. The debt is approximately \$376,000. Payment of the equity shall be in two equal installments, the first due six months after December 31, 1994 and a like installment six months thereafter.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

The integrity of the Court and the public's perception are important. It is the responsibility of a judge to recuse himself or herself in any conflict situation. A judge must disqualify himself or herself in a proceeding where his or her impartiality might reasonably be questioned.

I would recuse myself in claims involving relatives or close friends where it appears my independent judgment could be affected. I also would recuse myself in any claim where I may have been counsel of record prior to my appointment.

In all cases where my former law firm is involved, I would make full disclosure to all counsel and parties and comply with 28 U.S.C. §455.



I own 400 shares of stock in Peoples First Corporation. If any case came before me involving Peoples First Corporation, I would identify that to counsel and the parties and proceed only upon written approval. I am a volunteer, unpaid officer in LMICK; I will resign from that position upon confirmation.

It is impossible to speculate all possible conflicts which could arise. If I feel I had any personal or financial interest in any case, I would follow applicable guidelines and the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Please see attached financial disclosure form, A0-10

5. Please complete the attached financial net worth statement in detail. (Add schedules as called for.)

Attached

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No

AD-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Russell, Thomas B.	2. Court or Organization U.S. District Court Western District of Kentucky	3. Date of Report 9/14/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  Active - Article III	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 9/14/94 <input checked="" type="checkbox"/> Initial    Annual    Final	6. Reporting Period 1/1/93 - 9/14/94
7. Chambers or Office Address 300 Broadway P.O. Box 995 Paducah, KY 42002-0995	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	

IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Partner	Whitlow, Roberts, Houston & Russell
Partner	Old National Bank Building Partnership
Director	Kentucky Bar Foundation
Director & Vice President	Lawyers Mutual Insurance Co. of Kentucky

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

☐

NONE (No reportable agreements)

See Attached

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1	Whitlow, Roberts, Houston & Russell	
1/1/93-12/31/93	Income from Practice of Law	\$ 158,603.00
2	Whitlow, Roberts, Houston & Russell	
1/1/94-9/14/94	Income from Practice of Law	\$ 90,377.50
3	Old National Bank Building Partnership	
1/1/93-9/14/94	Real Estate Partnership Income (Net Rent Income)	\$ 994.00
4	Paducah Board of Education	
1/1/93-8/31/94	Spouse's Employment as a Teachers' Aide (S)	\$ 13,315.60
5		\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Russell, Thomas B.

Date of Report

9/14/94

**IV. REIMBURSEMENTS and GIFTS** — transportation, lodging, food, entertainment.  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION

<input type="checkbox"/> NONE (No such reportable reimbursements or gifts)	
1 Exempt	
2	
3	
4	
5	
6	
7	
8	

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE

<input type="checkbox"/> NONE (No such reportable gifts)		
1 Exempt		\$
2		\$
3		\$
4		\$

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*

<input type="checkbox"/> NONE (No reportable liabilities)		
1 Peoples First National Bank	See Attached	N
2		
3		
4		
5		
6		
7		

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 F = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Russell, Thomas B.

Date of Report

9/14/94

VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)		B. Income during reporting period	C. Gross Value at end of reporting period		D. Transactions during reporting period					
Indicate, where applicable, owner of the asset by using the parenthetical " (J) " for joint ownership of reporting individual and spouse, " (S) " for separate ownership by spouse, " (DC) " for ownership by dependent child.					If not exempt from disclosure					
Place "X" after each asset exempt from prior disclosure.		(1) Ant. Code (A-B)	(2) Type (e.g., div., rent or lnc.)	(1) Value-Code (J-P)	(2) Value Method-Code (Q-W)	(1) Type (a-f), buy, sell, mortg., redemp- tion	(2) Date: Month- Day	(3) Value-Code (J-P)	(4) Gain-Code (A-B)	(5) Identity of buyer/seller (if private transaction)
NONE (No reportable income, assets, or transactions)										
1 Checking Acct, Peoples First Nat'l Bank.										
2 Paducah KY (J)			None	J	T	Exempt.				
3 Money Fund, Peoples First Nat'l Bnk, Paducah (J)		A	Int.	J	T	"				
4 IRA, Peoples First Nat'l Bank, Paducah KY		A	Int.	J	T	"				
5 IRA, Peoples First Nat'l Bank, Paducah KY (S)		A	Int.	J	T	"				
6 IRA, PaineWebber Mutual Fund, Paducah KY		A	Div.	J	T	"				
7 IRA, PaineWebber Mutual Fund, Paducah KY (S)		A	Div.	J	T	"				
8 Profit Sharing Plan Peoples First Nat'l Bnk Paducah, KY										
See VIII.		D	Int.	M	T	"				
9 Office Bldg, 3 Parcels, 300 Broadway, Paducah.										
10 McCracken Co., KY, Jointly Owned by										
11 Parties		A	Rent	N	R	"				
12 Whitlow, Roberts, Houston & Russell Capital Acct.			None	K	U	"				
13 Savings Acct., Peoples First Nat'l Bank.										
14 Paducah KY (S)		A	Int.	J	T	"				
15 Common Stock, Peoples First Corp. Paducah (J)		A	Div.	J	T	"				
16 Savings Acct, Peoples First Nat'l Bank.										
17 Paducah KY (DC)		A	Int.	J	T	"				
18 Cash Value Life Ins., Northwestern Mutual										
19 Life Ins. Co., Paducah KY			None	L	T	"				
1 Income/Gain Codes: (See Col. B1 & D4)		A=\$1,000 or less B=\$15,001 to \$50,000 C=\$51,000 or less D=\$50,001 to \$500,000		B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 K=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000		C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000 P=More than \$1,000,000		D=\$5,001 to \$15,000 H=More than \$1,000,000 I=More than \$250,000		
2 Value Codes: (See Col. C1 & D3)		R=\$250,001 to \$500,000 Q=Appraisal U=Book Value		R=Cost (real estate only) W=Other		S=Assessment V=Estimated		T=Cash/Market		

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Russell, Thomas B.

Date of Report

9/14/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

VII. (8) Income to profit sharing plan came from Whitlow, Roberts,  
Houston & Russell Partnership contributions pursuant to plan and the  
interest and investments of the plan.

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

Thomas B. Russell

Date 9-14-94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to: Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



Name of Person Reporting:  
Russell, Thomas B., 9/14/94

## II. AGREEMENTS

1. January 1, 1993 Partnership agreement of Whitlow, Roberts, Houston & Russell. The partners are Henry O. Whitlow, Richard C. Roberts, Gary B. Houston, Thomas B. Russell, Mark C. Whitlow, E. Frederick Straub, Jr., Randy L. Treece, Mark S. Medlin and R. Christion Hutson. Pursuant to said agreement a withdrawing partner receives the net profits of the firm for the full calendar year multiplied by the fraction of the full calendar year during which the withdrawing partner remained. Such distribution shall be made after the end of the calendar year.

The capital account of the withdrawing partner shall be paid to him or her in three equal annual installments, the first of which shall be paid within one year of such withdrawal.

The withdrawing partner may purchase the life insurance policy on his or her life by payment to the firm of a sum equal to the cash surrender value of the policy, provided the withdrawing partner reimburses the firm for the unearned portion of any prepaid premium.

2. March 15, 1980 A real estate partnership with Henry O. Whitlow, Richard C. Roberts, Gary B. Houston and Thomas B. Russell known as Old National Bank Building Partnership. If a partner withdraws, the remaining partners may terminate and liquidate the real estate partnership or purchase the interest of the retiring partner. The purchase price is to be in two equal installments, the first six months after the end of the fiscal year in which the withdrawal occurred and a like payment one year after the end of the fiscal year in which withdrawal occurred. The last agreed appraisal of the building is \$475,000.00. The total indebtedness is approximately \$375,000.00.
3. I participate in the Whitlow, Roberts, Houston & Russell Profit Sharing Plan & Trust. I believe the current value of my account is approximately \$125,000.00. Upon confirmation, I will roll those funds into a personal managed plan.

Name of Person Reporting:  
Russell, Thomas B., 9/14/94

## VI. LIABILITIES

## CREDITOR

2. Peoples First  
National Bank

## DESCRIPTION

Loan to Old National  
Bank Building  
Partnership secured by  
mortgage on building.  
I am 25% interest  
partner. The total  
indebtedness of the  
partnership is  
\$376,258.00. This is  
a joint liability of  
the four partners.

## VALUE CODE

N

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	12	000	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured	3	130
Listed securities—add schedule	9	200	Notes payable to relatives		
Unlisted securities—add schedule		0	Notes payable to others		
Accounts and notes receivable:		0	Accounts and bills due		500
Due from relatives and friends		0	Unpaid income tax		0
Due from others		0	Other unpaid tax and interest		0
Doubtful		0	Real estate mortgages payable—add schedule	267	648
Real estate owned—add schedule	387	500	Chattel mortgages and other liens payable		
Real estate mortgages receivable		0	Other debts—itemize:		
Automobile and other personal property	45	000	VISA	5	800
Cash value—life insurance	62	000	Master Charge	1	240
Other assets—itemize:			American Express	1	500
Capital Acct. @ Whitlow,					
Roberts, Houston & Russell	31	000			
IRA	37	000	Total liabilities	279	818
Profit Sharing Plan	113	000	Net Worth	416	882
Total Assets	696	700	Total liabilities and net worth	696	700
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor		0	Are any assets pledged? (Add schedule.)	No	
On leases or contracts		0	Are you defendant in any suits or legal actions?	No	
Legal Claims		0	Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt		0			

FINANCIAL STATEMENT  
 Thomas B. Russell  
 Social Security No. 401-60-7668

SCHEDULE

Assets		
	Listed securities (over the counter):	
	Peoples First Corporation 400 shares @ \$23.00	9,200.00
	Real Estate Owned:	
	3575 Sherwood Road, Paducah, Kentucky	250,000.00
	1/4 interest in Old National Bank Building (\$550,000.00)	137,500.00
	Total Real Estate Owned	387,500.00
Liabilities		
	Real Estate Mortgage:	
	PNC Mortgage Co.	128,588.00
	Martha Baird (Mother-in-Law)	45,000.00
	I am a partner with three others in Old National Bank Building Partnership. Our total indebtedness is \$376,258.00 of which I have included one-fourth.	94,060.00
	Total Real Estate Mortgage	267,648.00

## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

My firm has a history of encouraging pro bono work and community service. When I became managing partner, I continued that tradition. As President of the Kentucky Bar Association, I strongly encouraged lawyers to be involved in pro bono activities.

As a young lawyer, I frequently represented indigent criminal defendants. I have placed my name on a listing of lawyers available for pro bono service in the state and federal courts. Only recently, I was appointed in State District Court to represent an indigent father on an alleged child neglect charge.

In 1989, the Western Kentucky Legal Service presented me with a pro bono award for efforts in encouraging local bar associations to participate in an organized pro bono effort. On at least a weekly basis, I provide pro bono service to callers or persons who walk in the office.

I have attempted to be active in community affairs, having served as President on the McCracken County Chapter of the American Red Cross and Paducah Rotary Club. I was on the Board of Directors of the Market House Museum and incorporated it and secured tax-exempt status for it at no charge. I have been active with the Boy Scouts of America, having served on the Executive Committee for a number of years. I also was Pack Leader of a Cub Scout Pack for three years and I was Assistant Scout Master of a Boy Scout Troop for three years. I am proud that both of my sons are Eagle Scouts. I have been involved in fund-raising for our local United Way.

I have been active in my church, serving as Chair of the Administrative Board, Chair of the Every Member Commitment Campaign, Superintendent of Sunday School, Chair of the Pastor Parish Relations Committee and Sunday School Teacher. I also have provided free legal advice on any legal questions at the church.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership



requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

To my knowledge, I do not belong to any club which has any discriminatory policies or procedures. I did belong to the Country Club of Paducah. Although the club has no African-American members, it has never denied membership to an African-American. Indeed, the by-laws<sup>1</sup> contain specific language that extends membership eligibility to persons without regard to race, color, creed, sex, national origin or disability. I resigned my membership in that club last month.

Also, when I first joined the Rotary Club of Paducah, the international organization did not allow female members. The rule was changed in 1988 to allow female members. The membership of the club currently includes female members as well as members of all races.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not a selection commission. I was contacted by Senator Ford. I have been interviewed by a committee from the Department of Justice. The FBI interviewed me and conducted additional interviews of persons who know me. I completed a questionnaire for the ABA. Also, an ABA representative interviewed me.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

---

<sup>1</sup>Although there is a provision in the by-laws that arguably creates a class of junior membership only available to males under the age of 34, there is another provision of those by-laws which states that the use of the male pronoun shall include the use of the female pronoun. Those by-laws have been so interpreted. In fact, there are female and male persons who have junior memberships. There is no membership exclusively available to one sex.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

A U.S. District Judge has the responsibility to apply the law of the case to the facts as proven. A District Judge should not consider the case as a means to change society or as a means to improperly legislate. That is the job of the elected body of our government.

The characteristics of "judicial activism" as outlined in the question would infringe upon the function assigned to our legislators and executive branch.

Within our system of separation of powers, the resolution of social issues is within the power of the elected representatives of Congress. A judge's opinion should be limited in application and attempt only to provide those parties involved a clarification and answer to their problem. In individual cases, the judge must guarantee the rights of each party.

Judges should not become involved in the administration of institutions. This type of judicial management is outside the judicial powers as described by our Constitution.

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

## 1. FULL NAME (INCLUDE ANY FORMER NAMES USED.)

Okla Jones, II

## 2. ADDRESS: LIST CURRENT PLACE OF RESIDENCE AND OFFICE ADDRESS(ES).

Home: 3310 Annette Street  
New Orleans, Louisiana 70122

Office: 421 Loyola Avenue, Room 303  
New Orleans, Louisiana 70112

## 3. DATE AND PLACE OF BIRTH.

September 23, 1945  
Natchitoches, Louisiana

4. MARITAL STATUS (INCLUDE MAIDEN NAME OF WIFE, OR HUSBAND'S NAME). LIST SPOUSE'S OCCUPATION, EMPLOYER'S NAME AND BUSINESS ADDRESS(ES).

Carolyn A. Carmon  
Homemaker

5. EDUCATION: LIST EACH COLLEGE AND LAW SCHOOL YOU HAVE ATTENDED, INCLUDING DATES OF ATTENDANCE, DEGREES RECEIVED, AND DATES DEGREES WERE GRANTED.College:Degree:

- Southern University (1964-1968)  
Baton Rouge, Louisiana

Political Science  
(B.A.) - 1968

- Northwestern State University  
(Summer 1966)  
Natchitoches, Louisiana

Summer Courses  
(no degree)

- Clark University (Summer 1967)  
Worcester, Massachusetts

Summer Internship  
Program in Geography  
(no degree)

- Emory University (Summer 1968)  
Atlanta, Georgia

Summer Internship  
Program in Pre-Law  
(no degree)

Law School:

- Boston College School of Law  
(1968-1971)  
Brighton, Massachusetts

Juris Doctor  
(J.D.) - 1971

6. **EMPLOYMENT RECORD: LIST (BY YEAR) ALL BUSINESS OR PROFESSIONAL CORPORATIONS, COMPANIES, FIRMS, OR OTHER ENTERPRISES, PARTNERSHIPS, INSTITUTIONS AND ORGANIZATIONS, NONPROFIT OR OTHERWISE, INCLUDING FIRMS, WITH WHICH YOU WERE CONNECTED AS AN OFFICER, DIRECTOR, PARTNER, PROPRIETOR, OR EMPLOYEE SINCE GRADUATION FROM COLLEGE.**

- 1971 to 1973: A Reginald Heber Smith Community Lawyer Fellow assigned to the New Orleans Legal Assistance Corporation as a staff attorney.
- 1973: Staff Attorney for the American Civil Liberties Union of Louisiana, New Orleans, Louisiana.
- 1973 to 1976: Project Director for the New Orleans Office of the Lawyers' Committee for Civil Rights Under Law (Washington, D.C.).
- 1976 to 1979: Associate Attorney with the now defunct law firm of Douglas, Nabonne & Wilkerson, New Orleans, Louisiana.
- 1976 to 1983: Part-time staff attorney with the Orleans Indigent Defender Program assigned to the Municipal and Traffic Courts of New Orleans.
- 1979 to 1982: Partner with the law firm of White, Jones & Lombard, New Orleans, Louisiana.
- 1982 to 1986: Senior partner with the now defunct law firm of Jones, Nabonne & Wilkerson, New Orleans, Louisiana.
- 1983 to 1986: Part-time Special Counsel to the New Orleans City Council.
- 1986 to 1990: City Attorney for the City of New Orleans.

- 1991 to Present: Judge of Division "N," of the Civil District Court for the Parish of Orleans.

7. **MILITARY SERVICE: HAVE YOU HAD ANY MILITARY SERVICE? IF SO, GIVE PARTICULARS, INCLUDING THE DATES, BRANCH OF SERVICE, RANK OR RATE, SERIAL NUMBER AND TYPE OF DISCHARGE RECEIVED.**

No

8. **HONORS AND AWARDS: LIST ANY SCHOLARSHIPS, FELLOWSHIPS, HONORARY DEGREES, AND HONORARY SOCIETY MEMBERSHIPS THAT YOU BELIEVE WOULD BE OF INTEREST TO THE COMMITTEE.**

- Invited to join Phi Beta Kappa in undergraduate school.
- Attended Boston College School of Law through a full tuition scholarship.
- Named the William J. Kenealy, S.J., Alumnus of the Year, by the Boston College Law School Alumni Association, May 5, 1993.

9. **BAR ASSOCIATIONS: LIST ALL BAR ASSOCIATIONS, LEGAL OR JUDICIAL-RELATED COMMITTEES OR CONFERENCES OF WHICH YOU ARE OR HAVE BEEN A MEMBER AND GIVE THE TITLES AND DATES OF ANY OFFICES WHICH YOU HAVE HELD IN SUCH GROUPS.**

- American Bar Association
- American Judicature Society
- Louisiana Bar Association
- New Orleans Bar Association
- National Bar Association
- National Conference of Black Lawyers
- Greater New Orleans Louis A. Martinet Society, Inc.  
(Past President - 1981)
- American Trial Lawyers Association



- Louisiana Trial Lawyers Association  
(President of Advisory Council - 1981)
- Louisiana District Judges Association  
(Legislative Committee - 1993)
- Governor's Task Force on Disparity in State Procurements (1989)
- Merit Selection Panel for Magistrates, United States District Court for the Eastern District of Louisiana (Fall, 1983) (February, 1984) (October, 1984)
- New Orleans Legal Assistance Corporation (Board of Directors - 1984)
- Special Committee to Evaluate the Louisiana State Bar Association's Disciplinary Procedures (1988)
- Alternative Dispute Resolution Task Force (1991)
- Judiciary Commission of Louisiana (appointed for 4 years - 3/28/92 - 3/27/96) (Presently Vice-Chairman)

**10. OTHER MEMBERSHIPS: LIST ALL ORGANIZATIONS TO WHICH YOU BELONG THAT ARE ACTIVE IN LOBBYING BEFORE PUBLIC BODIES. PLEASE LIST ALL OTHER ORGANIZATIONS TO WHICH YOU BELONG.**

- Louisiana District Judges Association (only group active in lobbying public bodies)
- Leukemia Society of New Orleans
- Big Brothers/Big Sisters of Greater New Orleans, Inc.
- Kappa Alpha Psi Fraternity

**11. COURT ADMISSION: LIST ALL COURTS IN WHICH YOU HAVE BEEN ADMITTED TO PRACTICE, WITH DATES OF ADMISSION AND LAPSES IF ANY SUCH MEMBERSHIPS LAPSED. PLEASE EXPLAIN THE REASON FOR ANY LAPSE OF MEMBERSHIP. GIVE THE SAME INFORMATION FOR ADMINISTRATIVE BODIES WHICH REQUIRE SPECIAL ADMISSION TO PRACTICE.**

- Louisiana Supreme Court (1971); membership lapsed upon my admission to the judiciary.

- United States District Court for the Eastern District of Louisiana (1971); membership lapsed upon my admission to the judiciary.
- United States District Court for the Middle District of Louisiana (1975, 1985 and 1989); membership lapsed as a result of a limited practice in that district.
- United States District Court for the Western District of Louisiana (1975); membership lapsed as a result of a limited practice in that district.
- United States Court of Appeals for the Fifth Circuit (1971); membership lapsed upon my admission to the judiciary.
- United States Supreme Court (1989); membership lapsed upon my admission to the judiciary.

12. **PUBLISHED WRITINGS:** LIST THE TITLES, PUBLISHERS, AND DATES OF BOOKS, ARTICLES, REPORTS, OR OTHER PUBLISHED MATERIAL YOU HAVE WRITTEN OR EDITED. PLEASE SUPPLY ONE COPY OF ALL PUBLISHED MATERIAL NOT READILY AVAILABLE TO THE COMMITTEE. ALSO, PLEASE SUPPLY A COPY OF ALL SPEECHES BY YOU ON ISSUES INVOLVING CONSTITUTIONAL LAW OR LEGAL POLICY. IF THERE WERE PRESS REPORTS ABOUT THE SPEECH, AND THEY ARE READILY AVAILABLE TO YOU, PLEASE SUPPLY THEM.

None

I have no extant written speeches on constitutional law or legal policy.

13. **HEALTH:** WHAT IS THE PRESENT STATE OF YOUR HEALTH? LIST THE DATE OF YOUR LAST PHYSICAL EXAMINATION.

My health is presently good; and my last physical examination was April 21, 1994.

14. **JUDICIAL OFFICE:** STATE (CHRONOLOGICALLY) ANY JUDICIAL OFFICES YOU HAVE HELD, WHETHER SUCH POSITION WAS ELECTED OR APPOINTED, AND A DESCRIPTION OF THE JURISDICTION OF EACH SUCH COURT.

I presently serve as a judge on the Civil District Court for the Parish of Orleans, Division "N." Elected to this court in October, 1990, I officially took office on January 1, 1991 for a six-year term in office. The Orleans Parish Civil District Court is a court of general civil jurisdiction which is limited to civil claims with

values of Twenty Thousand Dollars and above that are adjudicated through both jury and non-jury trials.

While I served as a Judge Ad Hoc on the Juvenile Court for the Parish of Orleans briefly in 1982, I have held no previous judicial office. The appointment by the Louisiana Supreme Court was for approximately three weeks. The Orleans Parish Juvenile Court is a court of limited jurisdiction solely authorized to adjudicate matters involving juveniles.

15. **CITATIONS: IF YOU ARE OR HAVE BEEN A JUDGE, PROVIDE: (1) CITATIONS FOR THE TEN MOST SIGNIFICANT OPINIONS YOU HAVE WRITTEN; (2) A SHORT SUMMARY OF AND CITATIONS FOR ALL APPELLATE OPINIONS WHERE YOUR DECISIONS WERE REVERSED OR WHERE YOUR JUDGMENT WAS AFFIRMED WITH SIGNIFICANT CRITICISM OF YOUR SUBSTANTIVE OR PROCEDURAL RULINGS; AND (3) CITATIONS FOR SIGNIFICANT OPINIONS OF FEDERAL OR STATE CONSTITUTIONAL ISSUES, TOGETHER WITH THE CITATION TO APPELLATE COURT RULINGS ON SUCH OPINIONS. IF ANY OF THE OPINIONS LISTED WERE NOT OFFICIALLY REPORTED, PLEASE PROVIDE COPIES OF THE OPINIONS.**

(1) Citations of ten most significant opinions

- A. Gessner v. Gessner (CDC No. 76-16350, Div. N, October 30, 1991). Affirmed on appeal at 614 So. 2d 307 (La. App. 4 Cir. 1993); and writs denied by the Louisiana Supreme Court at 618 So. 2d 410 (La. 1993).
- B. Zatzkis v. Zatzkis (CDC No. 89-2375, Div. N, July 14, 1991). This case involved six related issues that were appealed from my ruling. The appellate court ruled separately on two of the issues and consolidated the other four. My decision was affirmed and amended in the four consolidated cases at 632 So. 2d 302 (La. App. 4 Cir. 1993). On the two other issues, the appellate court reversed on one, and remanded on the other at 629 So. 2d 1285, and 632 So. 2d 307 (La. App. 4 Cir. 1993). Writs were denied by the Louisiana Supreme Court at Nos. 94-C-0159, 94-C-0160, 94-C-0976, and 94-C-0993 (La., June 24, 1994).
- C. Ratcliff v. Boydell, Et Al. (CDC No. 86-11313, c/w 86-15175, 86-19056, and 90-2303, Div. A June 5, 1992). The appeal is pending in this matter.

- D. Smith v. Charity Hospital, Et al. (CDC No. 83-19432, Div. N, February 24, 1993). Affirmed on appeal at 637 So. 2d 1177 (La. App. 4 Cir. 1994).
- E. Buckhalter v. Adinolfi, Et Al. (CDC No. 86-22217, c/w 88-2393, Div. N, July 22, 1993). Affirmed on appeal at 636 So. 2d 1217 (La. App. 4 Cir. 1994).
- F. Alphonse v. Omni Hotels Management Corporation (CDC No. 90-14989, Div. N, September 14, 1993). Appellate review is pending in this matter.
- G. Kammerer v. Sewerage and Water Board of New Orleans (CDC No. 87-15793, Div. N, March 31, 1993). Affirmed on appeal at 633 So. 2d 1357 (La. App. 4 Cir. 1994). Writs were denied by the Louisiana Supreme Court at 1994 WL 323161 (La., July 1, 1994).
- H. Davis v. Bill Watson Hyundai, Inc., Et Al. (CDC No. 88-03082, Div. N, December 31, 1993). An appeal has been lodged in this matter.
- I. Simeon v. Doe, Et Al. (CDC No. 87-5184, Div. N, February 9, 1994). Remanded to the district court for a limited trial by the Louisiana Supreme Court at 618 So. 2d 848 (La. 1993), after reversing the appellate court's ruling at 602 So. 2d 77 (La. App. 4 Cir. 1992). Appellate review is pending on my recent ruling after remand. I note that the reversal of the court of appeal's ruling was the result of actions by Judge Ortique, who previously presided over this case.
- J. Times-Picayune Publishing Corp. v. Jon D. Johnson, Et Al. (CDC No. 93-23490, Div. N, January 24, 1994). There is an impending appeal on this matter.

(2) Summary and citations of all appellate court reversals

- A. Bruscato v. Bruscato, 593 So. 2d 838 (La. App. 4 Cir. 1992). This was a case of divorce and a contentious contest for custody of the parties' five-year-old son. There were allegations of domestic violence against the husband and severe disturbances on the part of the wife. After a three-day trial, and the testimony of a psychologist, sociologist, and child psychiatrist, sole custody was granted to the father based upon the opinion of the court-

appointed psychologist that the wife was severely disturbed and had a questionable history as a mother and that, in the interest of maintaining the continuity of a stable home environment, the child should remain with his father.

The appellate court reversed and remanded the matter for the stated reasons that serious allegations concerning the psychiatric status of both parties were raised; therefore, the court should have had psychiatric evaluations of both partners at its disposal.

- B. April v. Associated Catholic Charities of New Orleans, 629 So. 2d 1295 (La. App. 4 Cir. 1993). The adoptive parents, Joycelyn and John April, sued Associated Catholic Charities, for breach of care, in failing to inform them that their adopted son suffered from fetal alcohol syndrome. Plaintiffs contended that they discovered the child's condition on August 21, 1990, in a letter from Dr. McAllister, a pediatric neurologist. They filed this lawsuit on July 16, 1991. Under Louisiana law, a lawsuit such as this should be filed within one year of the date of the discovery of the child's alleged illness, or the matter will prescribe. Defendant Associated Catholic Charities responded with an exception of prescription, claiming that plaintiffs should have filed suit within one year from April 2, 1990, the date that Dr. McAllister told Mrs. April by telephone that he thought the child "could have fetal alcohol syndrome" and that she had thought so "for a while." I denied defendant's exception on several grounds. First, the facts revealed that Mrs. April saw a movie and read a book about fetal alcoholic syndrome in early 1990, which lead her to consult with Dr. Diane Africk, an expert on fetal alcohol syndrome that she saw on television in July 1990, that Dr. Africk saw the child on July 30, 1990, and diagnosed the child in writing on August 22, 1990 as having the symptoms of fetal alcohol syndrome. Second, the oral conclusion that Dr. McAllister gave to Mrs. April that the child "could have fetal alcohol syndrome" was not an official diagnosis; and it was not until August 21, 1990, that Dr. McAllister executed an official letter that diagnosed the child as "suspected of having fetal alcohol syndrome."

The court of appeal reversed, holding that prescription commenced to run not later than April 2, 1990, when Mrs. April spoke with Dr. McAllister. It was further found by the court that nothing in Dr. McAllister's testimony indicated that the August



21, 1990 opinion was the result of information received after April 1990.

- C. Broussard v. Broussard, 617 So. 2d 1187 (La. App. 4 Cir. 1993). In this action, the former wife brought suit against the former husband to enforce a Consent Judgment for past due child support, attorney fees, past due vacation allowance, and an income assignment order against the husband's wages. Mr. Broussard filed a reconventional demand to nullify and/or to reduce the child support obligation due to the fact that one of the children had reached the age of majority. Based upon the poor documentation of receipts and records of both payments and non-payments of various obligations in this matter, I rendered judgment (1) granting Mr. Broussard a reduction in child support from \$1,000 to \$400 because of the changes in financial situation and the fact that one child had reached the age of majority; (2) denying attorney's fee since defendant prevailed on one of the issues; (3) reducing the past due vacation allowance to \$700 based on the documented proof; and (4) disallowing the income assignment because Mr. Broussard was self-employed.

On appeal, the court affirmed in part; reversed in part; and remanded. The court affirmed the grant of \$700 for past due vacation allowance. The denial of attorney's fees and an income assignment were reversed. As to the reduction in child support, the court remanded the matter for a recalculation based on the mandatory child support guidelines.

- D. McNeese v. P.I.A. Slidell, Inc., 635 So. 2d 1296 (La. App. 4 Cir. 1994). This action arises out of a tort claim filed by residents of Slidell in St. Tammany Parish against PIA Slidell, Inc., d/b/a Northshore Psychiatric Hospital, and its insurer, based upon the failure of the hospital to admit the plaintiff to the hospital at a time when she was a danger to herself--as a result, she shot herself after returning to her home. Records filed with the Secretary of State showed PIA to be a Louisiana corporation with its registered office in Slidell according to its initial report of 1984. Subsequent annual reports showed New Orleans as its registered place of business, but none of these reports were ever filed in the mortgage records of Orleans Parish. Defendants, PIA et al., took exception to venue being in Orleans Parish under La. C.C.P. art. 42(2) which provides that an action against a domestic corporation shall be brought in the parish where its registered

office is located. PIA argued that its registered office remained in St. Tammany Parish and was never changed to New Orleans despite the subsequent annual reports filed with the Secretary of State. I denied defendants' exceptions and maintained venue in New Orleans.

The court of appeal reversed and held that the hospital's registered office was not changed to New Orleans by virtue of the subsequent annual reports filed with the Secretary of State, since La. R.S. 12:104 mandated that a change of the registered office must be filed in the mortgage records of the parish where the new office is located. Absent such filing the office remains in the initial parish notwithstanding contrary representations in subsequent annual reports to the Secretary of State.

- E. Zatzkis v. Zatzkis, 629 So. 2d 1285 (La. App. 4 Cir. 1993). This was a divorce action where I granted a judgment of divorce along with a judgment and an amended judgment on two other issues. Defendant, Ralph Zatzkis appealed the judgments of the court, including the judgment decreeing the divorce. In an attempt to dismiss that portion of his appeal which related to the divorce judgment, Mr. Zatzkis filed an "Amended Motion and Order for Appeal" with the district court, which was granted, and a "Motion for Partial Dismissal of Appeal" with the appellate court, which was denied. Plaintiff, Sherril Zatzkis then sought alimony pendente lite from the trial court on grounds that when Ralph appealed without qualification or limitation the trial court judgments, including the divorce, the effect of the divorce was suspended pending the appeal, thus she was entitled to alimony as long as the divorce was pending. Since Mrs. Zatzkis was presently receiving divorce payments and it was clear that Mr. Zatzkis had inadvertently appealed the divorce judgment, I denied plaintiff's alimony pendente lite request. Mrs. Zatzkis appealed the denial of alimony and claimed attorney's fees for her actions.

The court of appeal reversed, holding that once the husband's order of appeal was granted the trial court no longer had jurisdiction to amend his Motion and Order for Appeal for purposes of dismissing the divorce. As to the alimony pendente lite request, the court noted that La. C.C.P. art. 3942, suspended the judgment of divorce while on appeal; therefore, Mrs. Zatzkis was entitled to alimony pendente lite until the appeal of the divorce was decided or dismissed. Attorney's fees and costs were refused by the court.

## (3) Citations of significant federal or state Constitutional issues

There were no federal or state constitutional issues that I opined on that I would regard as truly significant.

16. **PUBLIC OFFICE: STATE (CHRONOLOGICALLY) ANY PUBLIC OFFICES YOU HAVE HELD, OTHER THAN JUDICIAL OFFICES, INCLUDING THE TERMS OF SERVICE AND WHETHER SUCH POSITIONS WERE ELECTED OR APPOINTED. STATE (CHRONOLOGICALLY) ANY UNSUCCESSFUL CANDIDACIES FOR ELECTIVE PUBLIC OFFICE.**

I served as the appointed Special Counsel to the New Orleans City Council from 1983 to 1986, and as the appointed City Attorney of New Orleans, Louisiana from 1986 to 1991.

17. **LEGAL CAREER:**

a. **DESCRIBE CHRONOLOGICALLY YOUR LAW PRACTICE AND EXPERIENCE AFTER GRADUATION FROM LAW SCHOOL INCLUDING:**

1. **WHETHER YOU SERVED AS CLERK TO A JUDGE, AND IF SO, THE NAME OF THE JUDGE, THE COURT, AND THE DATES OF THE PERIOD YOU WERE A CLERK;**

No

2. **WHETHER YOU PRACTICED ALONE, AND IF SO, THE ADDRESSES AND DATES;**

No

3. **THE DATES, NAMES AND ADDRESSES OF LAW FIRMS OR OFFICES, COMPANIES OR GOVERNMENTAL AGENCIES WITH WHICH YOU HAVE BEEN CONNECTED, AND THE NATURE OF YOUR CONNECTION WITH EACH;**

- September, 1971 to January, 1973: Assigned to New Orleans Legal Assistance Corporation (NOLAC), 144 Elks Place, New Orleans, Louisiana, as a Reginald Heber Smith Fellow Staff Attorney from the Reginald Heber Smith Community Lawyer Fellowship Program, Washington, D.C. (Program now defunct). I served as a staff attorney and later as the head of the Desire-Florida office, providing indigent representation to that community in both civil and criminal law.

- February, 1973 to October, 1973: Staff Attorney for the American Civil Liberties Union of Louisiana, 921 Canal Street, New Orleans, Louisiana. I served as chief legal advisor, a litigator, and coordinator for civil liberties litigation throughout the State of Louisiana.

- November, 1973 to June, 1976: Project Director for the New Orleans Office of the Lawyers' Committee for Civil Rights Under Law (home office Washington, D.C.). The Lawyers' Committee was established under the Kennedy Administration to combat violations of and to enforce the then-existing Civil Rights Acts. I directed a staff which initiated and referred Title VII, voters' rights, reapportionment, and other civil liberties litigation. I also performed as co-counsel and as a resource person providing research, expertise, and overall assistance to private attorneys engaged in civil rights and civil liberties litigation throughout the State of Louisiana.

While serving as Director of the Lawyers' Committee, I also conducted a Title VII (Employment Discrimination) Clinic with Tulane University School of Law between 1974 and 1976. Under the supervision of the Committee's staff and those private attorneys handling cases in association with the Committee, second and third year law students engaged in the litigation of clinically assigned cases.

- July, 1976 to April, 1979: Associate attorney with the now defunct law firm of Douglas, Nabonne & Wilkerson, which was located at 418 Common Street, New Orleans, Louisiana. This was a general practice law firm; and I handled personal injuries and domestic litigation, successions, civil rights claims, and various other general practice matters.

While with that law firm, I also served (from August, 1976 to August, 1983) as a part-time attorney on the staff of the Orleans Indigent Defender Program (Criminal District Court Building, 2700 Tulane Avenue, New Orleans, Louisiana), where I was assigned to defend those accused of traffic and municipal misdemeanors, DWI's, and general municipal and traffic offenses in the Municipal and Traffic Courts of New Orleans.

- May, 1979 to November, 1982: Partner in the law firm of White, Jones & Lombard (now White & Guesnon), 2100 Tulane Avenue, New Orleans, Louisiana. As a partner in that general

practice law firm, I represented personal injury clients, small business and corporate clients, and other clients typical of the general practice of law.

- December, 1982 to May, 1986: Partner in the now defunct law firm of Jones, Nabonne & Wilkerson, which was located at 755 Carondelet Street, New Orleans, Louisiana. That general practice law firm primarily engaged in personal injury, small business, and corporate practice, in addition to representing the City Council of New Orleans in certain specialized municipal litigation.

At that law firm, I was also appointed and served from 1983 to 1986 as Special counsel to the New Orleans City Council. By contract, I was required to attend all council meetings, provide legal opinions to council members (individually and collectively), handle all litigation initiated by or involving the City Council, and provide general and special legal advice on contract, municipal, legislative, and utility regulatory matters.

- May, 1986 to December, 1990: City Attorney for the city of New Orleans, 1300 Perdido Street, New Orleans, Louisiana. As City Attorney, I served as the chief legal officer of the City, required by the Home Rule Charter to provide legal services (including opinions and advice, the drafting of ordinances and contracts, and representing the City in all litigation for and against it) to the Mayor, Council, and all departments, boards, agencies and commissions; and to prosecute municipal and traffic offenses in the Traffic and Municipal Courts of New Orleans.

- January, 1991 to Present: Judge, Civil District Court for the Parish of Orleans, Division "N." As a State District Court Judge, I preside over both jury and non-jury trials in a court of record of general civil jurisdiction; trials range from general tort actions to maritime litigation, and from simple collision cases to complex class actions and asbestos cases. I also participate in the en banc meetings of a court which handles the largest volume and greatest variety of civil litigation in the State of Louisiana.

b. 1. **WHAT HAS BEEN THE GENERAL CHARACTER OF YOUR LAW PRACTICE, DIVIDING IT INTO PERIODS WITH DATES IF ITS CHARACTER HAS CHANGED OVER THE YEARS?**

A review of my curriculum vitae reveals that over the course of 19 years in the practice of law, the general character of my practice



can be divided into three distinct periods. I would characterize the three phases as follows: (1) the earlier years -- 1971 through 1976 -- that consisted of public interest practice, with special emphasis on legal services to the indigent and civil rights and liberties matters; (2) the middle years -- from 1977 through 1985 -- which were purely private law practice, with the focus on honing my trial and litigational skills; and 3) the recent years - 1986 to the present -- dedicated to public sector practice, with a concentration on state and local government public-interest issues and public sector matters.

The first phase (1971-1976) was dominated by the kind of legal services work typical of a legal assistance agency like New Orleans Legal Assistance Corporation, such as: litigating juvenile matters, from adoptions to the defense of misdemeanors and major felonies in the Orleans Parish Juvenile Courts; representing adult defendants against prosecution of offenses in both Traffic and Municipal Court; conducting general domestic practice in the Civil District court (divorces, separations and child support matters); and defending against evictions and non-payment of rent actions in the First city Court and before the Housing Authority of New Orleans. This period culminated in my employment with the Lawyers' Committee for Civil Rights Under Law. The Lawyers' Committee work was almost exclusively federal in practice; and the typical cases involved class action allegations of wrongful discharge, or denial of promotions or pay due to race, color, sex or national origin. The scope of this public sector practice and of the Lawyers' Committee activities was state-wide.

The second period (1977-1985), which I characterized as the pursuit of private practice, began with my association in the Douglas law firm, and evolved within the subsequent law firms. Later, as a partner and then as a senior partner, I personally handled or directly participated in a wide range of state and federal civil and criminal cases, involving both jury and non-jury trials. This stage of practice included representing a variety of small business and corporate clients, and practicing before numerous state and local governmental agencies. While in full-time private practice, I was also employed (between 1976 and 1983) as a part-time public defender in the New Orleans Traffic and Municipal Courts, defending DWI offenders and other persons charges with violations of various city misdemeanors.

The third stage of my law practice, which was spent as a full-time City Attorney for the City of New Orleans, was devoted to public service representation in the areas of public and municipal law. As City Attorney, I supervised over 60 attorneys and 30 secretaries, paralegals and law clerks. I served as chief legal advisor to the City; and I was in charge of all prosecution of municipal and traffic offenses in both Traffic and Municipal Courts. While City Attorney, I was also in charge of defending the city in all suits filed against it, and representing the city in all actions filed on its behalf. During the more than 4 years that I served as City Attorney, I either supervised, personally participated, or was directly involved in all major cases confronting the City of New Orleans.

**2. DESCRIBE YOUR TYPICAL FORMER CLIENTS, AND MENTION THE AREAS, IF ANY, IN WHICH YOU HAVE SPECIALIZED.**

My typical clients as City Attorney were the Mayor, the New Orleans City Council, and an array of department heads, boards and commission, police officers, and numerous other individual employees of the city, and the City of New Orleans as a juridical body.

As indicated above, my typical clients in private practice were small incorporated and unincorporated businesses, tort and personal injury claimants, domestic clients seeking legal separations, divorces and the division of community property, debtors in bankruptcy, persons seeking criminal defenses, parties seeking wills and probations of estates and successions, and other clients typically encountered in the general practice of law.

Because of my training and experience with the ACLU and the Lawyers' Committee for Civil Rights Under Law, I was regarded as having expertise in the fields of Title VII, voters' rights claims, reapportionment litigation, and general civil liberties issues.

**c. 1. DID YOU APPEAR IN COURT FREQUENTLY, OCCASIONALLY, OR NOT AT ALL? IF THE FREQUENCY OF YOUR APPEARANCES IN COURT VARIED, DESCRIBE EACH SUCH VARIANCE, GIVING DATES.**

I appeared in court frequently from 1971 through early 1986. However, after May 5, 1986, my appearances in court

were occasional. After becoming City Attorney in 1986, I only participated directly in major controversies and high-profile cases involving the City of New Orleans, the Mayor, or the New Orleans City Council and its members. For example, I participated in all constitutional controversies involving the city, cases with major monetary exposure for the city, individual complaints against the Mayor and council members, and specialized litigation such as the Grand Gulf I nuclear generating station controversy and related matters.

**2. WHAT PERCENTAGE OF THESE APPEARANCES WAS IN:**

- (A) FEDERAL COURTS;**
- (B) STATE COURTS OF RECORD;**
- (C) OTHER COURTS.**

During the period between the latter part of 1976 and May, 1986, I would estimate my time spent in federal court appearances to be 30%; the remaining 70% of my appearances were in state courts of record. From 1973 through mid-1976, while I served as Director of the Lawyers' Committee for Civil Rights Under Law, virtually 100% of my appearances were in federal courts. After May of 1986, I would estimate that approximately 60% of my appearances were in state courts of record and 40% in federal courts.

**3. WHAT PERCENTAGE OF YOUR LITIGATION WAS:**

- (A) CIVIL**
- (B) CRIMINAL**

From 1971 through early 1986, I estimate that at least 70% of my practice was civil and 30% criminal (included in this latter category is the quasi-criminal practice in the New Orleans Traffic and Municipal Courts). After May, 1986, when I became City Attorney, virtually 100% of all my court appearances were in civil matters.

**4. STATE THE NUMBER OF CASES IN COURTS OF RECORD YOU TRIED TO VERDICT OR JUDGMENT (RATHER THAN SETTLED),**

**INDICATING WHETHER YOU WERE SOLE COUNSEL, CHIEF COUNSEL, OR ASSOCIATE COUNSEL.**

Over the nearly 20 years that I practiced law, I would estimate the number of cases that I tried to judgment or verdict as follows:

- (1) As sole counsel - 800
- (2) As chief counsel - 80
- (3) As associate counsel - 100

**5. WHAT PERCENTAGE OF THESE TRIALS WAS:**

- (A) JURY;
- (B) NON-JURY.

I would estimate that at least 70% of these cases tried were non-jury and 30% were by jury.

**18. LITIGATION: DESCRIBE THE TEN MOST SIGNIFICANT LITIGATED MATTERS WHICH YOU PERSONALLY HANDLED. GIVE THE CITATIONS, IF THE CASES WERE REPORTED, AND THE DOCKET NUMBER AND DATE IF UNREPORTED. GIVE A CAPSULE SUMMARY OF THE SUBSTANCE OF EACH CASE. IDENTIFY THE PARTY OR PARTIES WHOM YOU REPRESENTED; DESCRIBE IN DETAIL THE NATURE OF YOUR PARTICIPATION IN THE LITIGATION AND THE FINAL DISPOSITION OF THE CASE. ALSO STATE AS TO EACH CASE:**

- (A) THE DATE OF REPRESENTATION;
- (B) THE NAME OF THE COURT AND THE NAME OF THE JUDGE OR JUDGES BEFORE WHOM THE CASE WAS LITIGATED; AND
- (C) THE INDIVIDUAL NAME, ADDRESSES, AND TELEPHONE NUMBERS OF CO-COUNSEL AND OF PRINCIPAL COUNSEL FOR EACH OF THE OTHER PARTIES.

- 1. City of New Orleans v. Harris, 257 So. 2d 436 (La. 1972), writs refused; cert. granted, 411 U.S. 902, 935 S. Ct. 1532, 36 L. Ed. 2d 192 (1973); on remand, 283 So. 2d 207 (La. 1973). This case arose from defendants, Melvin Reed and William Harris being charged with disturbing the peace by assault against two football

coaches at a New Orleans Recreation Department football game, in alleged violation of New Orleans Ordinance No. 828 MCS, Section 42-24. Without being advised of their right to counsel or appointed counsel, the defendants were tried in New Orleans Municipal Court; each was found guilty; and each was sentenced to 30 days in the House of Detention. First, I took a suspensive appeal to the Criminal District Court for the Parish of Orleans, which confirmed the convictions. Second, I applied for writs to the Louisiana Supreme Court, which writs were denied. Third, an appeal was taken to the United States Supreme Court, which was ultimately granted and the case remanded to the Louisiana Supreme Court.

The United States Supreme Court held that indigents convicted of a misdemeanor, and sentenced to 30 days imprisonment, who were without counsel and who were not advised of their right to counsel, had been unconstitutionally deprived of the right to counsel, in the absence of a knowing and intelligent waiver of such rights.

The significance of this case is that it established the right-to-counsel in Orleans Parish Municipal and Criminal Courts for all indigent defendants charged with misdemeanors and felonies.

I represented the defendants (Harris and Reed) as their sole attorney both at the trial level and on appeal; and the case was decided in favor of the defendants on appeal. In June, 1972, the United States Supreme Court handed down Argersinger v. Hamlin, 407 U.S. 25, 92 S. Ct. 2006, 32 L. Ed. 2d 530 (1972), thus vacating and remanding this case to the Louisiana Supreme Court. On September 24, 1973, the Louisiana Supreme Court reversed the sentence and conviction and remanded the case for a new trial.

- a. Trials were conducted on November 2, 1971, and November 2, 1973.
- b. New Orleans Municipal Court  
Andrew F. Bucaro, Judge
- c. Principal counsel for the other party:
  - (1) Blake C. Arata  
GORDON, ARATA, McCOLLAM & DUPLANTIS



Place St. Charles, 40th Floor  
 201 St. Charles Avenue  
 New Orleans, Louisiana 70170-4000  
 (504) 582-1111

- (2) Servando C. Garcia, III  
 3850 North Causeway Boulevard  
 Metairie, Louisiana 70002  
 (504) 835-5085

2. Mix v. Blanchard, 318 So. 2d 125 (La. App. 4 Cir. 1975). Both plaintiff, Raymond Mix and defendant John Blanchard, were candidates for the office of representatives from the 93rd Legislative District for the State of Louisiana. In his qualifying papers defendant gave his domicile as 4105 Melpomene Street, but he acknowledged that he owned a home with his wife and children at 6109 Campus Boulevard (outside the 93rd District). Thus, plaintiff challenged defendant's eligibility as a legitimate candidate alleging that Blanchard was not "actually domiciled" in the legislative district as required by the Louisiana Constitution, Art. 3, Sec. 4 (A) (1974).

The appellate court held that a candidate's domicile was where he maintained his wife and children and slept several nights each week, notwithstanding the fact that he maintained two rooms in his original home at the in-district address, slept in those quarters three or four nights a week, and continued to vote in the district.

This case was of significance because it appears to hold that where a candidate has two residences, the one where his wife and children are maintained is likely to be his "actual domicile" as defined in Louisiana Constitution, Art. 3, Sec. 4(A) (1974), regardless of other significant contact with the second residence.

I represented the defendant, Blanchard and tried the case with the assistance of co-counsel of record. After prevailing in district court, and winning an initial four-to-four tie in the Louisiana Fourth Circuit, we lost the case by a five-to-four split on rehearing before that court. Certiorari was denied by the State Supreme Court at 320 So. 2d 547 (La. 1975).

- a. Trial: August 10, 1975.

- b. Civil District Court for the Parish of Orleans  
Richard J. Garvey, Judge
  - c. Co-counsel on case:
    - (1) Anthony W. Skidmore  
2 Canal Street  
New Orleans, Louisiana 70130  
(504) 522-5544
    - (2) John M. Blanchard, Pro se  
2002 North Rocheblave Street  
New Orleans, Louisiana 70119  
(504) 944-9727
  - d. Principal counsel for the other party:
    - (1) James A. McPherson  
9128 Quince Street  
New Orleans, Louisiana 70118  
(504) 486-2022
3. Burstein v. Morial, 437 So. 2d 1179 (La. App. 4 Cir. 1983), writ granted, 438 So. 2d 566 (La. 1983), and judgment affirmed, 438 So. 2d 554 (La. 1983). This action stemmed from an ordinance passed by the New Orleans City Council calling for an election by the voters of the city to amend Article IV of the Home Rule Charter of the City of New Orleans to allow for unlimited mayoral terms, except as to the then-current mayor. The mayor subsequently vetoed the ordinance; and the city council went through a series of attempts to override the veto. Plaintiffs, Carole Burstein, along with other citizens, voters and taxpayers of the City of New Orleans, sought injunctive relief declaring the override of the Mayor's veto of the ordinance ineffective, and enjoining the defendants (the Mayor, City Council, five individual Council members, the Clerk of Council, the Commissioner of Elections, and the Secretary of State) from taking any further action on the allegedly invalid ordinance. Plaintiffs argued that the City Council failed to effectively override the Mayor's veto on several grounds. First, the Home Rule Charter mandated that the override action be affirmatively voted upon by two-thirds of all council members at one of the next two regularly scheduled meetings. Since the Council consisted of seven members, five votes were required to override a veto. Because the Mayor had

appointed one of the Council members-at-large to serve temporarily as Acting Mayor prior to the vote to reconsider the override, and that member's vote made up the five, in violation of the prohibition of the Home Rule Charter against the Acting Mayor casting a vote on the Council, the override failed. Second, the subsequent votes attempted by the City Council were invalid because the Council's Rules forbade reconsideration of a motion to reconsider the override, once taken.

The Louisiana Supreme Court granted certiorari to consider the several important questions of interpretation of the city's home rule charter, and held that: 1) the home rule charter of the city does not permit more than one attempt by the City Council to override the Mayor's veto; and 2) the appointment of a council member to serve as Acting Mayor does not effectively reduce the size of the City Council by one member so as to diminish the number of votes required to override the Mayor's veto.

Since former Mayor Morial could usually count on two solid votes from the City Council on his behalf, he could (by appointing an Acting Mayor from the remaining five prior to the Council's consideration of his veto) effectively defeat any override by dooming the attempt to a four-to-two vote, one less than the two-thirds majority required votes. This case is significant in that it affected the fundamental balance of power between the legislative and executive branches of city government, and the basic checks and balances surrounding the legislative process. I, along with co-counsel, represented the City of New Orleans and the four individual City Council members. I participated as lead counsel in the case. The district court held in our favor as to the ability of the council to validly override the mayor's veto on a second reconsideration, but the Fourth Circuit Court of Appeal and the Louisiana Supreme Court reversed.

- a. Trial: July 23, 1983
- b. Civil District Court for the Parish of Orleans  
Richard J. Ganucheau, Judge
- c. Co-counsel on case:
  - (1) Ronald P. Nabonne  
4316 Laurel Street  
New Orleans, Louisiana 70115

- (2) Stephen B. Murray  
650 Poydras Street  
New Orleans, Louisiana 70130  
(504) 525-8100

d. Principal counsel for the other parties:

- (1) Mack E. Barham  
BARHAM & ARCENEUX  
650 Poydras Street  
New Orleans, Louisiana 70130  
(504) 525-4400  
For Carole Burstein, Elizabeth O'Neal, Et Al
- (2) Salvador Anzelmo  
Lykes Center, Suite 2100  
300 Poydras Street  
New Orleans, Louisiana 70130  
(504) 524-5297  
For the City of New Orleans
- (3) Galen S. Brown  
LAMOTHE, HAMILTON & ODOM  
Pan American Life Center  
Suite 2750  
601 Poydras Street  
New Orleans, Louisiana 70130  
(504) 566-1805  
For the City of New Orleans
- (4) Judge Michael Bagneris  
Civil District Court for the Parish of  
Orleans, Division "H"  
421 Loyola Avenue  
New Orleans, Louisiana 70112  
(504) 592-9336  
For the City of New Orleans
- (5) Ronald C. Davis (deceased)  
Maureen J. Feran  
Assistant Attorney General of Louisiana  
234 Loyola Avenue  
New Orleans, Louisiana  
(504) 568-5575

For the Commissioner of Elections and the Secretary  
of State

4. City of New Orleans v. Scramuzza, 507 So. 2d 215 (La. 1987). On October 10, 1986, the City of New Orleans adopted an Earnings Tax Ordinance, No. 11,416 MCS, which imposed a tax of 1.5% of annual gross earnings, in excess of \$5,000 of every person working in the City of New Orleans. To determine the ordinance's legality and constitutionality prior to implementation, the City of New Orleans, as plaintiff, filed for a declaratory judgment on the validity of the ordinance. Made defendants in the lawsuit were Al Scramuzza and several other class representatives and all classes of persons affected by the earnings tax, included Resident and Non-Resident Taxpayers, and Employers of Taxpayers of the Earnings Tax. Several separate suits filed against the City of New Orleans were also consolidated with this suit and the parties allowed to properly re-align. Essentially, the City contended that the Earnings Tax was not an "income tax" prohibited by the Louisiana Constitution, Art. VII, Sec. 4(C) (1974); rather, the City urged the tax was a tax only upon gross earnings and was thus distinct from the traditional income tax premised upon a different structure, locus, and base.

The Louisiana Supreme Court held the New Orleans Earnings Tax was an impermissible local "income tax" in violation of Article VII, Section 4(C) of the Louisiana Constitution of 1974.

The case presented an issue of great financial significance for most of the larger cities of Louisiana. New Orleans, like many other municipalities, was (and is) facing severe revenue shortfalls, and has had to increasingly assume a greater share of responsibility for services once provided or funded by the state and federal governments. The City's earnings tax represented a tax alternative (available to a number of other city governments in other states) to increase local revenues. This case eliminated this alternative in Louisiana.

I represented the City of New Orleans. I tried the case with the assistance of co-counsel, as the lead attorney. We lost both at the district court level and before the Louisiana Supreme Court.

- a. Trial: February 9-12, 1987.
- b. Civil District Court for the Parish of Orleans



George C. Connolly, Judge

c. Co-counsel on the case:

- (1) Donald R. Mintz  
SESSIONS & FISHMAN  
201 St. Charles Avenue  
New Orleans, Louisiana 70170  
(504) 582-1500
- (2) Mack E. Barham  
BARHAM & ARCENEUX  
Poydras Center - Suite 2700  
650 Poydras Street  
New Orleans, Louisiana 70130  
(504) 525-4400
- (3) Jackson P. McNeely (deceased)  
Bruce E. Naccari  
Eleanor K. Roemer (presently with Lake Michigan  
Foundation in Chicago)  
City Hall  
City Attorney's Office  
1300 Perdido Street  
New Orleans, Louisiana 70112  
(504) 565-6200

d. Principal counsel for the other parties:

- (1) Jessie S. Guillot  
1523 Polymnia Street  
New Orleans, Louisiana 70130  
(504) 522-7296  
For Al Scramuzza
- (2) Cy Courney  
2521 Joseph Street  
New Orleans, Louisiana 70115  
(504) 866-7555  
For William Sanchez

- (3) Maurice E. Clark, Jr.  
3929 Tulane Avenue  
New Orleans, Louisiana 70119  
(504) 488-4486  
For Resident Taxpayer
  
- (4) Anthony R. Messina  
2616 Stoneleigh Drive  
New Orleans, Louisiana 701  
(504) 737-1014  
For Resident Taxpayer
  
- (5) Louis G. Gruntz, Jr.  
960 Jefferson Highway  
Jefferson, Louisiana 70121  
(504) 835-7949  
For Jefferson Parish
  
- (6) James S. Arceneaux  
2341 Metairie Road  
Metairie, Louisiana 70001  
(504) 837-4950  
For Donald Johnston and  
D.H. Holmes Co., Ltd.
  
- (7) Craig J. Cimo  
Assistant Parish Attorney, Jefferson  
310 Weyer Street  
Gretna, Louisiana 70053  
(504) 362-9012
  
- (8) Walter Reed  
Lane Carson  
District Attorney's Office  
St. Tammany Parish  
428 East Boston Street  
Covington, Louisiana 70433  
(504) 898-2392
  
- (9) John Rowley  
Marcel Gueniot  
District Attorney's Office  
St. Bernard Parish  
Post Office Box 947

Chalmette, Louisiana 70044  
(504) 271-1658

- (10) Richard D. Faulkner  
3850 North Causeway Boulevard  
Metairie, Louisiana 70002  
(Unlisted)  
For Non-Resident Taxpayer
  
- (11) Lawrence E. Chehardy  
CHEHARDY, SHERMAN, ELLIS & BRESLIN  
Suite 1100  
One Galleria Boulevard  
Metairie, Louisiana 70001  
(504) 835-5600  
For Jefferson Parish
  
- (12) R. Lawrence Kurt  
1225 Leontine Street  
New Orleans, Louisiana 70115  
(504) 897-3478  
For Resident Taxpayer
  
- (13) Kenneth C. Fonte  
3850 North Causeway Boulevard  
Metairie, Louisiana 70002  
(504) 836-7120  
For Kenneth C. Fonte and  
Colleen Conrad Fonte

- 5. Hilderbrant v. City of New Orleans, 549 So. 2d 1218 (La. 1989), cert. denied, Hirsch v. City of New Orleans, 494 U.S. 1028, 110 S. Ct. 1476, 108 L. Ed. 2d 613 (1990). In July, 1986, the New Orleans City Council adopted a series of three ordinances imposing a tax on "all inheritances, legacies, donations and gifts made in contemplation of death" where death occurred on or after July 15, 1986. The tax extended to the transfer of all immovable and tangible movables physically situated in Orleans Parish, as well as tangible and intangible movables owned by an Orleans Parish domiciliary, wherever the movables were situated. The levy of the tax would take effect at the moment of death; and the tax became due and owing at the time an inheritance tax return

was filed with the State Collector of Revenue. Plaintiffs, who were the heirs and legatees of persons that died after July 15, 1986, brought numerous suits against the City that were consolidated, challenging these taxing ordinances on constitutional, statutory and procedural grounds. The State of Louisiana also intervened, and maintained that the City was not authorized to levy an inheritance tax.

In upholding the ordinances of the City of New Orleans that levied municipal "inheritance tax," the Louisiana Supreme Court ruled that, at the time of the adoption of the 1974 Constitution, the City had full power to levy any tax not prohibited by or inconsistent with the Constitution. La. Const. art. XIV, Sec. 22 (1921). That power, including the power to levy an inheritance tax, was continued by La. Const. art. VI, Sec. 4 (1974).

Significantly, this case reaffirmed the court's earlier rulings on the city's unique and broad taxing authority: that it may levy any and all taxes not prohibited by or inconsistent with the constitution.

I represented the City of New Orleans and its Finance Director. The case was argued on cross-motions for summary judgment by me and an assistant. In reversing the district court and ruling for the City, the Louisiana Supreme Court remanded the case. A rehearing was requested by plaintiffs and denied by the Louisiana Supreme Court on October 19, 1988.

- a. Trial: December 22, 1988
- b. Civil District Court for the Parish of Orleans  
Revis O. Ortique, Judge
- c. Co-counsel on the case:
  - (1) Blaine G. LeCesne  
Associate Professor of Law  
Loyola Law School  
7214 St. Charles Avenue  
New Orleans, Louisiana 70118  
(504) 861-5650

- (2) Don J. Hernandez  
HERNANDEZ & STEWART  
One Seine Court  
Westpark Office Park  
Suite 207  
New Orleans, Louisiana 70114  
(504) 364-6131

d. Principal counsel for the other parties:

- (1) Moise W. Dennerly  
LEMLE, KELLEHER, KOHLMAYER,  
DENNER, HUNLEY, MOSS & FRILOT  
Pan American Life Center  
Suite 2100  
601 Poydras Street  
New Orleans, Louisiana 70130  
(504) 586-1241
- (2) John A. Ronchell  
BALDWIN & HASPEL  
Energy Centre - Suite 2200  
1100 Poydras Street  
New Orleans, Louisiana 70163-2200  
(504) 585-7711
- (3) Edward F. Wegmann  
WEGMANN & WEGMANN  
201 St. Charles Avenue  
New Orleans, Louisiana 70170  
(504) 582-8226
- (4) James G. Dalteres  
MONROE & LEMANN  
201 St. Charles Avenue  
Suite 3300  
New Orleans, Louisiana 70170  
(504) 581-7312
- (5) Alan H. Katz  
3200 Energy Centre  
1100 Poydras Street  
New Orleans, Louisiana 70163



(504) 585-3200

- (6) William C. Gambel  
MILLING, BENSON, WOODWARD,  
HILLYER, PIERSON & MILLER  
909 Poydras Street  
New Orleans, Louisiana 70112  
(504) 569-7000

6. Schafer v. City of New Orleans, 743 F.2d 1086 (5th Cir. 1984). This action resulted from New Orleans District City Councilmember Bryan Wagner's, introduction of an emergency moratorium ordinance in January, 1984, prohibiting the issuance of permits for fast-food restaurants in a certain section of the Carrollton neighborhood of Uptown New Orleans until a study of land use in the area could be completed or until December 31, 1984, whichever was sooner. Plaintiffs, Thomas E. Schafer, Jr., and others, as landowners of the affected property, had previously entered into an agreement to purchase with McDonald's Corporation, which intended to use the property as a McDonald's Drive-In. Due to the New Orleans City Council's adoption of the moratorium, McDonald's terminated the agreement to buy plaintiffs' property. Plaintiffs then sued the New Orleans City Council and Councilmember Wagner, individually, seeking a preliminary and permanent injunction, and contending that the ordinance violated Louisiana law and deprived them of their property without due process or equal protection of the law.

The United States Court of Appeals for the Fifth Circuit found that an interim emergency land use regulation or moratorium--which served a significant public purpose of preserving the status quo while a land study of the area was being completed--was not a "taking" of the landowners' property nor was it a denial of due process or equal protection rights.

The court's recognition of the moratorium on land use is of noteworthy significance in that: 1) moratoria reasonably used, can play an important role in municipal planning; and 2) they serve to preserve the status quo, thus protecting against a possible dramatic increase in the number of adverse uses that might be occasioned prior to completion of impending land use studies.

I represented the New Orleans City Council and Councilmember Bryan Wagner, individually, as special counsel to the City

Council; and I tried the case on their behalf alone with an assistant city attorney, who represented the City of New Orleans. The appellate court affirmed the district court's holding in favor of the City of New Orleans, the City Council of New Orleans, and Bryan Wagner.

- a. Trial was conducted over three days during the summer of 1984.
  - b. United States District Court for the Eastern District of Louisiana  
Robert I. Collins, Judge
  - c. Co-counsel on the case:
    - (1) Karen E. Milner  
LAMOTHE, HAMILTON & ODOM  
Suite 1750  
601 Poydras Street  
New Orleans, Louisiana 70130  
(504) 566-1805
  - d. Principal counsel for the other parties:
    - (1) Timothy G. Schafer  
SCHAFER & SCHAFER  
328 Lafayette Street  
New Orleans, Louisiana 70130  
(504) 522-0011
    - (2) Joseph R. Ward, Jr.  
WARD & CLES  
Suite 2100  
639 Loyola Avenue  
New Orleans, Louisiana 70112  
(504) 561-5000
7. Jackson Court Condominiums, Inc. v. City of New Orleans, 874 F.2d 1070 (5th Cir. 1989). Following a grant of summary judgment by the United States District Court (at 665 F. Supp. 1235 (1987)), a condominium developer, alleging denial of constitutional rights because of the city council's refusal to grant a waiver to a land use moratorium for a proposed time-share development, appealed to the United States Court of Appeals for

the Fifth Circuit. The Fifth Circuit held that the council's decision was legislative, rather than administrative; thus, procedural due process did not apply, nor did the denial of the waiver violate substantive due process or equal protection or amount to a "taking" of property.

The recognition of the New Orleans City Council's discretion, as a rational and legitimate exercise of the police power, to protect residential neighborhood integrity (from increased noise, litter, and vandalism associated with transient uses) is the notable significance of this case.

I, along with several of my assistants, represented the City of New Orleans. I participated in the drafting of pleadings, in discovery, and in trial preparation; however, the summary judgment motion was submitted without oral argument. The district and appellate courts found in favor of the city.

- a. Trial: March 11, 1987
  - b. United States District Court for the Eastern District of Louisiana  
A. J. McNamara, Judge
  - c. Co-counsel on the case:
    - (1) Bruce E. Naccari  
Eleanor K. Roemer  
City Hall  
City Attorney's Office  
1300 Perdido Street  
New Orleans, Louisiana 70112  
(504) 565-6200
  - d. Principal counsel for the other party:
    - (1) Warren A. Goldstein  
634 Carondelet Street  
New Orleans, Louisiana 70130  
(504) 581-7933
8. McDermott v. Hollander, 60 F.R.D. 643 (E.D.La. 1973). Plaintiffs, Betty McDermott and Gerald Peters, brought this suit individually and on behalf of a class of 223 similarly situated persons under

the Consumer Credit Protection Act, 15 U.S.C. Sec. 1601 et seq., known as the Truth-in-Lending Act. Named defendants were Jerry Hollander, d/b/a King Educators, and the Consumers Credit Corporation. Plaintiffs contended that they, along with each member of the putative class, were sold a set of books by the sales representative for defendant Hollander which were impliedly represented to be new but were in fact used. They further maintained that defendant, Hollander sold the books on a time payment basis through a promissory note in which he issued a Truth-in-Lending disclosure statement that falsely represented that no financial charge was imposed. Yet, Hollander, through a prearranged plan, sold plaintiffs' notes at a discount to defendant, Consumers Credit, which in effect created a finance charge in violation of the Truth-in-Lending Act.

In certifying the class action under the Truth-in-Lending Act, the district court noted that its action was consistent with the statute's goals of creating a system of "private attorney generals" who will be able to aid the effective enforcement of the Act; that the Act was intended to allow aggrieved consumers to participate in policing the Act; and that its language should be construed liberally in light of its broadly remedial purpose.

This case is of significance because it represented one of the earliest cases in the district and circuit certifying and allowing a class action to be maintained under the Truth-in-Lending Act.

I represented McDermott and the class of approximate 223 persons. As the sole attorney for the plaintiffs, I tried the case to a favorable conclusion in district court.

- a. Trial: April 10, 1973
- b. United States District Court for the Eastern District of Louisiana  
Alvin B. Rubin, Judge
- c. Principal counsel for the other parties:
  - (1) Roy M. Lilly, Jr.  
(Address and telephone numbers unlisted)  
For Jerry Hollander, d/b/a King Educators
  - (2) Thomas R. Blum

SIMON, PERAGINE, SMITH & REDFEARN  
 Energy Centre - Suite 3000  
 1100 Poydras Street  
 New Orleans, Louisiana 70163  
 (504) 569-2030  
 For Consumers Credit Corporation

9. New Orleans Public Service v. City of New Orleans, 782 F. 2d 1236 (5th Cir. 1986), modified, 798 F. 2d 858 (5th Cir. 1986), cert. denied, 481 U.S. 1023, 107 S. Ct. 1910, 95 L. Ed. 2d 515 (1987). Plaintiff, New Orleans Public Service, Inc. ("NOPSI") is the electrical services provider for most of the City of New Orleans. The genesis of this case was the Federal Energy Regulatory Commission's ("FERC") "Opinion and Order Setting Just Reasonable and Non-Discriminatory Rates," 31 F.E.R.C. (CCH) Para. 61,305 (June 13, 1985), which allocated the cost of Grand Gulf Unit One, a 1250 megawatt nuclear power plant, among the various subsidiaries of a multi-state public utility holding company, including NOPSI's share of 17% of the costs. In order to make its pay back of 17%, or 15.5 million dollars a month starting in July, 1985, NOPSI sought an immediate permanent rate increase from defendant, New Orleans City Council, its utility regulator. In an alleged effort to prevent "rate shock" to the utility customers, the City Council granted NOPSI "emergency interim relief." The interim relief consisted of: 1) freezing electric rates until further regulatory action; 2) recommending that NOPSI issue 35 million dollars in securities approved by the Securities and Exchange Commission to sustain its immediate cash flow problems; 3) encouraging NOPSI to immediately obtain a 32 million dollar cash advance that a Middle South Utilities Inc. ("MSU") subsidiary owed; and 4) recommending that NOPSI continue to omit dividend payments on common stock to MSU. From the City Council's order, NOPSI sought injunctive relief in district court. Among other things, NOPSI claimed that the Council's order in effect violated FERC's exclusive authority to regulate wholesale energy under the Federal Power Act, 16 U.S.C. Secs. 824-824k, and constituted an impermissible burden on interstate commerce that would render NOPSI insolvent.

The district court dismissed NOPSI's claims for lack of subject matter jurisdiction and, alternatively, abstained from interfering in local rate-making matters. The United States Court of Appeals for the Fifth Circuit initially reversed and remanded the



case, but on further reconsideration, it held that the district court's abstention on NOPSI's statutorily-based preemption claim was appropriate under the Federal Power Act and prevailing federal jurisprudence.

With resounding clarity, the appellate court reaffirmed the "bright line" doctrine between federal and state jurisdiction (in the regulation of the sale of electricity): that the Federal Energy Regulatory Commission (FERC) controls the regulation of rates governing wholesale and/or interstate distribution, while state or local governments control the rates of intrastate transmission and local retail distribution. Significantly, this holding preserved the integrity of municipal control over rate regulation of local electric utility companies.

I represented the New Orleans City Council, as special counsel, along with a Washington, D.C. firm and the City Attorney's Office. I participated in all pleadings, hearings, and other aspects of the defense of the case. The district court held in favor of the city; and the appellate court ultimately affirmed.

- a. Trial: November, 1985
- b. United States District Court for the Eastern District of Louisiana  
A. J. McNamara, Judge
- c. Co-counsel on the case:
  - (1) Clinton A. Vince  
Bernhard K. Wruble  
Glen L. Ortman  
Paul G. Nordstrom  
VERNER, LIIPFERT, BERNHARD,  
McPHERSON & HAND  
901 15th Street, N.W.  
Washington, D.C. 20005-2301  
(202) 371-6000  
For the New Orleans City Council,  
Sidney J. Barthelemy, et al
  - (2) Salvador Anzelmo  
Thomas Milliner  
Lykes Center, Suite 2100

300 Poydras Street  
 New Orleans, Louisiana 70130  
 (504) 524-5297  
 and  
 Bruce E. Naccari  
 Beverly Zervigon  
 City Hall  
 City Attorney's Office  
 1300 Perdido Street  
 New Orleans, Louisiana 70112  
 (504) 565-6200  
 For the City of New Orleans

d. Principal counsel for the other parties:

- (1) Andrew P. Carter (deceased)  
 J. Wayne Anderson  
 W. Glenn Burns  
 MONROE & LEMANN  
 201 St. Charles Avenue  
 Suite 3300  
 New Orleans, Louisiana 70170  
 (504) 586-1900  
 For New Orleans Public Service, Inc.
- (2) Herschel L. Abbott, Jr.  
 JONES, WALKER, WAECHTER, POITEVENT,  
 CARRERE & DENEGRÉ  
 201 St. Charles Avenue  
 New Orleans, Louisiana 70170  
 (504) 582-8000  
 For Middle South Utilities
- (3) Richard M. Troy  
 Assistant Attorney General of Louisiana  
 234 Loyola Avenue  
 New Orleans, Louisiana 70112  
 (504) 568-5575  
 For the State of Louisiana

10. Soniat v. Barthelemy, 436 So. 2d 707 (La. App. 4 Cir. 1983), writ denied, 437 So. 2d 286 (La. 1983). Plaintiffs, Llewellyn Soniat and other citizens and taxpayers of the City of New Orleans, filed this lawsuit in furtherance of their efforts to amend

the Home Rule Charter of the City of New Orleans, by deleting the prohibition in the charter against a Mayor who has served two full consecutive terms from succeeding himself. To amend the City Charter, an affirmative vote of a majority of the qualified electors of the City is required. One way such an amendment may originate under the City Charter is by a petition of not less than 10,000 of the duly qualified registered voters of the City. After obtaining tentative certification of in excess of 10,000 signatures from the Registrar of Voters on an original and many supplemental petitions to the City Council, plaintiffs sought to mandamus the defendants (Registrar of Voters, the New Orleans City Council, and individual Council members), seeking (1) to have the Registrar continue the verification process until 10,000 qualified registered voters were certified; and (2) to have the City Council enact an ordinance calling an election on the proposed Charter amendment within the time set out in the Charter (to meet the next available election date). The New Orleans City Council contended that the Charter did not provide for the filing of supplemental petitions, and that since the original petition contained insufficient signatures, the Council was not mandated to call the election.

The appellate court held that the 10,000 signatures would have been certified from the original petition had the Registrar of Voters been ordered to continue his verification process, and that the New Orleans City Council was mandated to call an election on the proposed Charter change once the threshold of 10,000 signatures was reached.

The decision in this case is significant for its disposition of two issues of interpretation of two important sections of the Home Rule Charter of the City of New Orleans. First, is the requirement that "10,000 duly qualified registered voters" sign a petition to amend the city charter met on the date of the filing of a first petition with less than the required number, or the date of the supplement petition(s) that achieve(s) the requisite number? Second, whether the failure to comply with the "not less than 90 days before an election" (Sec. 9-202(2)) provision invalidates an ordinance calling an election to amend the charter where all provisions are met and the required 10,000 names are certified.

I represented the defendants, Barthelemy, et al, and was the lead trial attorney in the case. The trial court held for the plaintiffs in part and for the defendants in part. The appellate

court reversed and ruled for plaintiffs. The Louisiana Supreme Court denied writs.

- a. Trial: July 16-17, 1983.
- b. Civil District Court for the Parish of Orleans  
Richard J. Ganuchau, Judge
- c. Co-counsel on the case:
  - (1) Ronald P. Nabonne  
4316 Laurel Street  
New Orleans, Louisiana 70115  
(504) 891-7320
  - (2) Walter J. Wilkerson  
WILKERSON & HENRY  
Poydras Center Building - Suite 1913  
650 Poydras Street  
New Orleans, Louisiana 70130  
(504) 522-4572
- d. Principal counsel for the other parties:
  - (1) John S. Keller  
Suite 1140  
639 Loyola Avenue  
New Orleans, Louisiana 70113  
(504) 588-9173  
For Llewellyn Soniat, Et Al
  - (2) William J. Guste, Jr.  
639 Loyola Avenue  
New Orleans, Louisiana 70112  
(504) 529-7200  
For the Registrar of Voters

The following are a list of attorneys who have had contact with me over the last five years:

- (1) Nils R. Douglas  
2653 Iberville Street

- New Orleans, Louisiana  
(504) 821-5066
- (2) Joseph W. Thomas  
2 Canal Street  
New Orleans, Louisiana  
(504) 525-2256
- (3) Salvador Anzelmo  
Lykes Center, Suite 2100  
300 Poydras Street  
New Orleans, Louisiana 70130  
(504) 524-5297
- (4) Louis L. Robein, Jr.  
2540 Severn Avenue  
Suite 400  
Metairie, Louisiana 70009-6768  
(504) 885-9994
- (5) Peter J. Butler, Sr.  
601 Poydras Street  
New Orleans, Louisiana 70130  
(504) 523-2800
- (6) Russ Herman  
820 O'Keefe Avenue  
New Orleans, Louisiana 70113  
(504) 581-4892

19. **LEGAL ACTIVITIES:** DESCRIBE THE MOST SIGNIFICANT LEGAL ACTIVITIES YOU HAVE PURSUED, INCLUDING SIGNIFICANT LITIGATION WHICH DID NOT PROGRESS TO TRIAL OR LEGAL MATTERS THAT DID NOT INVOLVE LITIGATION. DESCRIBE THE NATURE OF YOUR PARTICIPATION IN THIS QUESTION, PLEASE OMIT ANY INFORMATION PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE (UNLESS THE PRIVILEGE HAS BEEN WAIVED.)

In my opinion, the work that I performed with the Lawyers' Committee for Civil Rights Under Law in the mid-1970s qualifies as the most significant legal activity that I have pursued, at least from the standpoint of personal gratification, since this work engendered a strong sense that I was really making significant contributions to the genuine concerns of a diverse class of working folks and civic-minded individuals.



The activities entailed personal interviews and consultation of persons with both real and perceived notions that their jobs were being jeopardized as a result of prejudicial racial or sexual animus. The vast majority of the meritorious claims never reached the litigation stage. They involved protracted dialogue and negotiation between the claimants, the employer, and the Equal Employment Opportunity Commission. In many instances the face-to-face airing of the dispute was cathartic for both worker and employer, and amicable resolutions were achieved. Since most of my clients were sole bread-winners or essential contributors to the household, the outcomes of most of these claims were potentially devastating to the continued livelihood of entire families.

My Lawyers' Committee work also involved the satisfaction of seeing the potential of the law to build the human community. Lack of or inadequate representation by public officials in many of the rural areas of the state led to community discord. Working with local leaders and city officials to overcome these problems, often led to enduring community harmony and increased prosperity for the locales.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. LIST SOURCES, AMOUNTS AND DATES OF ALL ANTICIPATED RECEIPTS FROM DEFERRED INCOME. ARRANGEMENTS, STOCKS, OPTIONS, UNCOMPLETED CONTRACTS AND OTHER FUTURE BENEFITS WHICH YOU EXPECT TO DERIVE FROM PREVIOUS BUSINESS RELATIONSHIPS, PROFESSIONAL SERVICES, FIRM MEMBERSHIPS, FORMER EMPLOYERS, CLIENTS, OR CUSTOMERS. PLEASE DESCRIBE THE ARRANGEMENTS YOU HAVE MADE TO BE COMPENSATED IN THE FUTURE FOR ANY FINANCIAL OR BUSINESS INTEREST.

I have four years of City of New Orleans Retirement benefits that have been merged with my four year contribution to the Louisiana Judicial Retirement Fund. No future arrangement has been made for the receipt of these funds.

2. EXPLAIN HOW YOU WILL RESOLVE ANY POTENTIAL CONFLICT OF INTEREST, INCLUDING THE PROCEDURE YOU WILL FOLLOW IN DETERMINING THESE AREAS OF CONCERN. IDENTIFY THE CATEGORIES OF LITIGATION AND FINANCIAL ARRANGEMENTS THAT ARE LIKELY TO PRESENT POTENTIAL CONFLICTS-OF-INTEREST DURING YOUR INITIAL SERVICE IN THE POSITION TO WHICH YOU HAVE BEEN NOMINATED.

My co-ownership of a commercial building with a practicing attorney in the city possibly poses a conflict of interest. I will resolve this potential conflict of interest by disposing of my interest in the property. I further intend to follow all guidelines mandated by the Code of Judicial Conduct.

3. DO YOU HAVE ANY PLANS, COMMITMENTS, OR AGREEMENTS TO PURSUE OUTSIDE EMPLOYMENT, WITH OR WITHOUT COMPENSATION, DURING YOUR SERVICE WITH THE COURT? IF SO, EXPLAIN.

I do not.

4. LIST SOURCES AND AMOUNTS OF ALL INCOME RECEIVED DURING THE CALENDAR YEAR PRECEDING YOUR NOMINATION AND FOR THE CURRENT CALENDAR YEAR, INCLUDING ALL SALARIES, FEES, DIVIDENDS, INTEREST, GIFTS, RENTS, ROYALTIES, PATENTS, HONORARIA, AND OTHER ITEMS EXCEEDING \$500 OR MORE (IF YOU PREFER TO DO SO, COPIES OF THE FINANCIAL DISCLOSURE REPORT, REQUIRED BY THE ETHICS IN GOVERNMENT ACT OF 1978, MAY BE SUBSTITUTED HERE.)

See the attached Financial Disclosure Report.

5. PLEASE COMPLETE THE ATTACHED FINANCIAL NET WORTH STATEMENT IN DETAIL (ADD SCHEDULES AS CALLED FOR).

See the attached statment with schedules.

6. HAVE YOU EVER HELD A POSITION OR PLAYED A ROLE IN A POLITICAL CAMPAIGN? IF SO, PLEASE IDENTIFY THE PARTICULARS OF THE CAMPAIGN, INCLUDING THE CANDIDATE, DATES OF THE CAMPAIGN, YOUR TITLE AND RESPONSIBILITIES.

Yes, I have. In 1983, I served as campaign manager for Ronald C. Davis, who was an unsuccessful candidate seeking to fill a vacancy on the bench of the Civil District Court for the Parish of Orleans, Division "D." As campaign manager, I was responsible for the overall administration, strategy, and fundraising efforts of the Davis' campaign. The election was in the fall of 1983.

## III. GENERAL (PUBLIC)

1. **AN ETHICAL CONSIDERATION UNDER CANON 2 OF THE AMERICAN BAR ASSOCIATION'S CODE OF PROFESSIONAL RESPONSIBILITY CALLS FOR "EVERY LAWYER, REGARDLESS OF PROFESSIONAL PROMINENCE OR PROFESSIONAL WORKLOAD, TO FIND SOME TIME TO PARTICIPATE IN SERVING THE DISADVANTAGED." DESCRIBE WHAT YOU HAVE DONE TO FULFILL THESE RESPONSIBILITIES, LIST SPECIFIC INSTANCES AND THE AMOUNT OF TIME DEVOTED TO EACH.**

The first six years of my legal career were devoted almost entirely to the poor and disadvantaged. From 1971 to 1976, I was employed as a full-time attorney in legal aid services with the New Orleans Legal Assistance Corporation; I engaged in my pro bono constitutional and civil liberties work with the American Civil Liberties Union; and my civil rights and employment discrimination work with the Lawyers' Committee for Civil Rights Under Law. While attempting to develop and pursue a private law practice between 1976 and 1983, I worked as a part-time attorney for the Orleans Indigent Defender Program, which was solely dedicated to providing legal representation to the poor and indigent. As a result of my continuing service and work in the community, I was appointed to serve a two-year term on the board of directors of the New Orleans Legal Assistance Corporation in 1984.

During my private practice years between 1983 and 1986, I regularly accepted indigent referrals from both the New Orleans Legal Assistance Corporation and the American Civil Liberties Union. Additionally, due to my past involvement in the civil rights field, I generally accepted about ten to twelve percent of my total caseload as pro bono cases each year. In 1986, I withdrew from the private practice of law, and thereafter, my involvement in activities pro bono publico has been through community speaking engagements, forums, and organizations such as the New Orleans Pro Bono Project.

2. **THE AMERICAN BAR ASSOCIATION'S COMMENTARY TO ITS CODE OF JUDICIAL CONDUCT STATES THAT IT IS INAPPROPRIATE FOR A JUDGE TO HOLD MEMBERSHIP IN ANY ORGANIZATION THAT INVIDIOUSLY DISCRIMINATES ON THE BASIS OF RACE, SEX, OR RELIGION. DO YOU CURRENTLY BELONG, OR HAVE YOU BELONGED, TO ANY ORGANIZATION WHICH DISCRIMINATES -- THROUGH EITHER FORMAL MEMBERSHIP POLICIES? IF SO, LIST, WITH DATES OF MEMBERSHIP. WHAT YOU HAVE DONE TO TRY TO CHANGE THESE POLICIES?**

I am not a member of any organization, to my knowledge, that discriminates on the basis of race, sex, or religion; nor have I belonged to such an organization.

3. IS THERE A SELECT COMMISSION IN YOUR JURISDICTION TO RECOMMEND CANDIDATES FOR NOMINATION TO THE FEDERAL COURTS? IF SO, DID IT RECOMMEND YOUR NOMINATION? PLEASE DESCRIBE YOUR EXPERIENCE IN THE ENTIRE JUDICIAL SELECTION PROCESS, FROM BEGINNING TO END (INCLUDING THE CIRCUMSTANCES WHICH LED TO YOUR NOMINATION AND INTERVIEWS IN WHICH YOU PARTICIPATED).

There is no selection commission in this jurisdiction, to my knowledge.

To obtain my judicial nomination, I first notified both my senators and congressman of my interest in becoming a federal district court judge. This action was followed by soliciting numerous letters of recommendation from all sectors of New Orleans and the State of Louisiana, including community, religious, political, legal, and lay sectors. I was subsequently interviewed by the senators and the congressman. Based upon the recommendations of my two senators and the congressman, I was presented by the White House with a package of papers to be completed. After proper completion of the White House papers, I was interviewed by the FBI and the Standing Committee of the American Bar Association (ABA) and subjected to a full investigation and background check for fitness and qualification by these agencies. Following this process, I was recommended by the senators and congressman to the President for nomination as a United States District Court Judge for the Eastern District of Louisiana.

4. HAS ANYONE INVOLVED IN THE PROCESS OF SELECTING YOU AS A JUDICIAL NOMINEE DISCUSSED WITH YOU ANY SPECIFIC CASE, LEGAL ISSUE OR QUESTION IN A MANNER THAT COULD REASONABLY BE INTERPRETED ASKING HOW YOU WOULD RULE ON SUCH CASE, ISSUE, OR QUESTION? IF SO, PLEASE EXPLAIN FULLY.

No.

5. PLEASE DISCUSS YOUR VIEWS ON THE FOLLOWING CRITICISM INVOLVING "JUDICIAL ACTIVISM."

THE ROLE OF THE FEDERAL JUDICIARY WITHIN THE FEDERAL GOVERNMENT, AND WITHIN SOCIETY GENERALLY, HAS BECOME THE SUBJECT OF INCREASING CONTROVERSY IN RECENT YEARS. IT HAS BECOME THE TARGET OF BOTH POPULAR AND ACADEMIC CRITICISM THAT



**ALLEGES THAT THE JUDICIAL BRANCH HAS USURPED MANY OF THE PREROGATIVES OF OTHER BRANCHES AND LEVELS OF GOVERNMENT.**

**SOME OF THE CHARACTERISTICS OF THIS "JUDICIAL ACTIVISM" HAVE BEEN SAID TO INCLUDE:**

- a. **A TENDENCY BY THE JUDICIARY TOWARD PROBLEM-SOLUTION RATHER THAN GRIEVANCE-RESOLUTION;**
- b. **A TENDENCY BY THE JUDICIARY TO EMPLOY THE INDIVIDUAL PLAINTIFF AS A VEHICLE FOR THE IMPOSITION OF FAR-REACHING ORDERS EXTENDING TO BROAD GLASSES OF INDIVIDUALS;**
- c. **A TENDENCY BY THE JUDICIARY TO IMPOSE BROAD, AFFIRMATIVE DUTIES UPON GOVERNMENTS AND SOCIETY;**
- d. **A TENDENCY BY THE JUDICIARY TOWARD LOOSENING JURISDICTIONAL REQUIREMENTS SUCH AS STANDING AND RIPENESS; AND**
- e. **A TENDENCY BY THE JUDICIARY TO IMPOSE ITSELF UPON OTHER INSTITUTIONS IN THE MANNER OF AN ADMINISTRATOR WITH CONTINUING OVERSIGHT RESPONSIBILITIES.**

My own view is that the judiciary must be careful to preserve the Constitutional separation of powers among the executive, legislative, and judicial branches of government. The responsibility of the judiciary in this area is solemn and profound. Since the judicial branch is constitutionally entrusted with the ultimate responsibility for resolution of disputes involving alleged breach of the separation of powers, abuse of the power to resolve such issues by the courts would ultimately unravel the long-standing constitutional consensus in America and threaten the basis of popular legitimacy upon which our ordered government rests.

However, I also am of the opinion that courts should not legislate "broad duties upon government and society," but they should be forthright and thorough in enforcing fulfillment of those duties which are imposed by the Constitution and laws. The courts should not usurp the role of administration, nor should they seek to become the legislators of public policy and "problem-solving," but the courts cannot shy away from the need to maintain continuing oversight of a dispute, where the facts of the particular case require it; nor should the courts avoid thorough and conclusive grievance-resolution out of a fear that what is needed for conclusive adjudication of the case before the court will be perceived by some as generalized social "problem-solving." In

determining issues of jurisdiction and standing, the federal judiciary is obligated to recognize the time-honored limitations on the scope of the federal union and of federal judicial jurisdiction, but must also -- intelligently and with moderation -- construe these principles in the context of the contemporary actual and practical importance of the federal government in the modern era.

AD-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

 Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  Jones, II, Okla	2. Court or Organization United States District Judge -Eastern District of Louisiana	3. Date of Report  8-29-94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  United States District Judge-Active	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 8-25-94 ___ Initial ___ Annual ___ Final	6. Reporting Period  1/1/93 - 8/25/94
7. Chambers or Office Address  421 Loyola Avenue, Room 302 New Orleans, LA 70112	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable law and regulations  Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☐

NONE (No reportable positions)

Co-proprietor

Commercial building, 755 Carondelet Street

New Orleans, Louisiana

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME  
(yours, not spouse's)

(Honoraria only)

☐

NONE (No reportable non-investment income)

1	1993 Judicial Salary	\$ 72,746
2	Year to date 1994 Judicial Salary	\$ 55,600
3		\$
4		\$
5		\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting  
Jones, II, OklaDate of Report  
8-29-94

## IV. REIMBURSEMENTS and GIFTS - transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

☒ X

NONE (No such reportable reimbursements or gifts)

1		
2		
3		
4		
5		
6		
7		
8		

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

☒ X

NONE (No such reportable gifts)

1		\$
2		\$
3		\$
4		\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

☐

NONE (No reportable liabilities)

1		Mortgage payments, Residential rental property	K
2	National Mortgage Co. (S)		
3	RTC	Mortgage payments, Commercial property	K
4			
5			
6			
7			

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = more than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Jones, II, Okla

Date of Report

8-29-94

## VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets) <small>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.</small>	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code <sup>1</sup> (A-E)	(2) Type (e.g., div., rent or int.)	(1) Value Code <sup>2</sup> (J-P)	(2) Value Method Code <sup>3</sup> (Q-W)	If not exempt from disclosure				
					(1) Type (e.g., buy, sell, merger, redemption)	(2) Date: Month/Day	(3) Value Code <sup>2</sup> (J-P)	(4) Amt. Code <sup>1</sup> (A-E)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 NYL Mainstay Mutual Fund	A	int.	J	T					
2 NYL Mainstay Mutual Fund (S)	A	int.	J	T					
3 (DC) MFS Emerging Growth Mut. Fd	A	div.	J	T					
4 Residential Rental Property 1415 Elysian Fields, New (S)	B	rent	K	Q					
5 Orleans, LA									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes: (See Col. B1 & D4)	A=\$1,000 or less B=\$15,001 to \$50,000 C=\$15,000 or less (See Col. C1 & D3) D=\$250,001 to \$500,000	E=\$1,001 to \$2,500 F=\$50,001 to \$100,000 G=\$15,001 to \$50,000 H=\$500,001 to \$1,000,000 I=Cost (real estate only) J=Other	K=\$2,501 to 5,000 L=\$100,001 to \$1,000,000 M=\$150,001 to \$100,000 N=More than \$1,000,000 O=Assessment P=Estimated	Q=\$5,001 to \$15,000 R=More than \$1,000,000 S=\$100,001 to \$250,000 T=Cash/Market
2 Value Codes: (See Col. C1 & D3)	J=\$15,000 or less K=\$250,001 to \$500,000	L=\$15,001 to \$50,000 M=\$500,001 to \$1,000,000	N=More than \$1,000,000	
3 Value Method Codes: (See Col. C2)	Q=Appraisal R=Book Value	S=Assessment T=Other	U=Estimated	



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting Jones, II, Okla	Date of Report 8-29-94
---	---------------------------

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

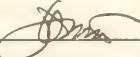
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et, seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

8/29/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks		9 078	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured No. 5		4 500
Listed securities—add schedule No. 3		12 512	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due No. 4		11 100
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule No. 2		174 000
Real estate owned—add schedule No. 2		290 000	Chattel mortgages and other liens payable No. 6		28 565
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property		41 575			
Cash value—life insurance sched No. 1					
Other assets—itemize:					
Personal household items					
jewelry & artwork		228 000			
State of LA Retirement Plan		43 718	Total liabilities		218 165
			Net Worth		406 818
Total Assets		624 883	Total liabilities and net worth		624 883
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, comaker or guarantor	None		Are any assets pledged? (Add schedule.) No		
On leases or contracts	None		Are you defendant in any suits or legal actions? No		
Legal Claims	None		Have you ever taken bankruptcy? No		
Provision for Federal Income Tax	None				
Other special debt	None				

Name of Person Insured	Name of Insurance Company	Type of Policy	Face Amount of Policy	Total Cash Surrender Value	Total Loans Against Policy	Amount of Yearly Premium	Is Policy Assigned? To Whom?
Kla Jones II	Carolyn Jones Old Line	Life Term	500,000		—	\$1,000	No

Location City/County	Description	Mortgages or Leases	Due Dates and Amounts of Payments	Mortgage or Lease Holder	Original Cost	Present Market Value	Unpaid Taxes	
							Year	Amount
0 Annette	Personal Hh	109,000	1st-\$1,424	Symbel	\$150,000	\$165,000	-	-
5 Elysian Fields	Rental-Res	25,000	1st-424	Marl Mort	31,000	45,000	-	-
Carondelet	Commercial	40,000(ownership)	1st-500	EDIC	121,000	75,000(ownership)	-	-
Chitoches Parish	Res. Int	-00-	-00-	-00-	Gift	5,000	-	-

Face Value Bonds No. Stock Shares	Description of Security	Registered in Name Of	Cash	Present Market Value	Income Received Last Year	If Pledged Sole to Whom?
822 Shares	Mainstay Mutual Fd	Carolyn Jones	\$8.70	\$3,323.40	\$220.66	-
827 shares	Mainstay Mutual Fd	Oklia Jones, II	8.70	7,194.90	478.29	-
104 shares	NFS Emerging Growth B	O.Jarred Jones, III	14.11	1,993.68	39.04	-
		TOTAL	\$31.51	\$12,511.98	\$737.99	-

Citibank VISA	4,700
MENA Mastercard	1,500
Citibank VISA	4,900
	<u>11,100</u>

Liberty Bank and Trust 4.500

Liberty Bank and Trust  
(1991 Mercedes 190E) 10,565

Lacap Federal Credit Union  
(1994 Nissan Quest Van)

	18,000
	<u>28,565</u>

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

G. THOMAS PORTEOUS, JR.  
QUESTIONNAIRE FOR JUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

Gabriel Thomas Porteous, Jr.

2. Address: List current place of residence and office address(es).

Residence: 4801 Neyrey Drive  
Metairie, LA 70002

Office: 24th Judicial District Court  
Division "A"  
Gretna Courthouse Annex Bldg.  
2nd Floor, Room 200  
Gretna, LA 70053

3. Date and place of birth.

December 15, 1946

New Orleans, LA

4. Marital status (include maiden name of wife, or husband's name. List spouse's occupation, employer's name and business address(es).

Carmella Ann Giardina Porteous  
Vascular Technician  
Vascular Laboratory, Inc.  
3939 Houma Blvd., Suite 20  
Metairie, LA 70006

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Louisiana State University (New Orleans) 1964-1968  
 Bachelor of Arts - Economics  
 Degree Awarded: May, 1968

Louisiana State University Law School 1968-1971  
 Baton Rouge, LA  
 Juris Doctor  
 Degree Awarded: May, 1971

6. Employment Record: List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

District Court Judge January 1, 1985 - Present  
 State of Louisiana  
 Division A, 24th Judicial District Court

Co-instructor: Loyola School of Law Spring 1990  
 Civil Procedure Spring 1991

District Court Judge, Ad Hoc August 24, 1984 - January 1, 1985  
 State of Louisiana  
 Division A, 24th Judicial District Court

District Attorney's Office Assistant District Attorney  
 Parish of Jefferson Supervisor: February 1, 1975-August 6, 1984  
 District Atty. John Mamoulides Chief Felony Complaint Div.:  
 Gretna Courthouse Annex Bldg. October 8, 1973-January 31, 1975  
 5th Floor  
 Gretna, LA 70053

St. Mary Dominican College  
 Instructor: Criminal law and procedure 1982



Porteous & Mustakas  
3445 North Causeway Blvd.  
Metairie, LA 70002

Partner  
April 1980 - August 1984

City Attorney's Office  
City of Harahan  
6437 Jefferson Hwy.  
Harahan, LA 70123

City Attorney  
July 1, 1982 - August 23, 1984

Porteous, Lee & Mustakas  
139 Huey P. Long Ave.  
Gretna, LA 70053

Partner  
February 1976 - April 1980

Edwards, Porteous & Lee  
139 Huey P. Long Ave.  
Gretna, LA 70053

Partner  
August 1974 - January 1976

Edwards, Porteous & Amato  
139 Huey P. Long Ave.  
Gretna, LA 70053

Partner  
October 1973 - July 1974

Attorney General  
State of Louisiana  
P.O.Box 94005  
Baton Rouge, LA 70804

Special Counsel  
September 10, 1971 - October 7, 1973

B & L Associates  
Dick Barrios  
512 Acadia  
Baton Rouge, LA 70806  
(800) 673-0545  
(504) 751-4791  
Position: Clerk/Assistant

1970 - 1971

Baker Shoe Stores 1968 - 1971  
 Westside Shopping Center  
 Gretna, LA 70053  
 (no longer at that location)  
 main branch - 837 Canal St.  
 New Orleans, LA 70112  
 (504) 524-7904  
 Position: Shoe Salesman

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

La. State Bar Association  
 4th & 5th Circuit Judges Association President - 1991  
 Chief Judge - 24th Judicial district Court - 1992  
 American Bar Association  
 Jefferson Bar Association  
 American Judges Association  
 American Judicature Society  
 La. District Attorney's Association President Assistant - 1974  
 District Attorney Section

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. please explain the reason for any lapse of member ship. Give the same information for administrative bodies which require special admission to practice.

All State Courts of Louisiana September 7, 1971

United States District Court, September 19, 1972  
Eastern District of Louisiana

United States Supreme Court April 18, 1977

United States Court of Appeals, 5th Circuit October 1, 1981

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you please supply them.

See Attachment "A".

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent - May, 1990.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I was first elected without opposition in 1984 for the term to commence January 1, 1985. At the request of the Louisiana Supreme Court, because the Division "A" seat was vacant, I was appointed to sit as the Ad Hoc Judge, effective August 24, 1984. I was re-elected without opposition in 1990 for the term commencing January 1, 1991.

The 24th Judicial District Court is a state trial court of general civil and criminal jurisdiction. However, juvenile proceedings and traffic violations are not included in our jurisdiction. Other specific courts dispose of these two areas.

15. Citations: If you are or have been a judge, provide:

(1) citations for the ten most significant opinions you have written;

- (1) David Egudin v. Carriage Court Condominium, et al., 528 So.2d 1043, (La. App 5 Cir., June 1988)
- (2) In the Matter of Wrongful Death of Stanton J. Stark, #No. 86-CA-34 (La. App. 5 Cir., June, 1986) (Not designated for publication)

See Attachment "B-1"

- (3) Edgar Carlsen v. Mehaffey & Daigle, Inc., et al., 519 So.2d 1187, (La. App. 5 Cir., Jan. 1988); 522 So.2d 1091, (LA 1988)
- (4) Paul Fuller v. William Barattini, 574 So.2d 412, (La. App. 5 Cir., Jan., 1991)
- (5) Paul Hidding v. Dr. Randall Williams, 578 So.2d 1192, (La. App. 5 Cir., April, 1991)
- (6) Karen Jewell v. The Bershire Development, 612 So.2d 749, (La. App. 5 Cir. Dec., 1992)
- (7) Thuan Ngoc Do v. Phuong Hoang Ngo, et al., 618 So.2d 1213, (La. App. 5 Cir., May, 1993)
- (8) Betty Ann Dunn v. Kreutziger, D.D.S., et al., 625 So.2d 672, (La. App. 5 Cir., Oct., 1993)
- (9) Judy Watts on behalf of minor, Polly Watts v. J.C. Penny et al., App.Ct. # \_\_\_\_\_, (La. App 5 Cir., 1994) (Not designated for publication)

See Attachment "B-2"

- (10) Kenneth Poche and Scott Key v. Bayliner Marine Corporation and Wagner Marine, Inc., 632 So.2d 1170, (La. App. 5 Cir., Feb., 1994)

(2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings;

State v. Abadie, 612 So.2d 1 (LA 1993). Defendant made a statement implicating himself in the murder of a seven year old girl, Raquel Fabre. The issue of right to counsel was involved on appeal from ruling that the statement was admissible. The Supreme Court found that defendant sufficiently invoked right to counsel by unsuccessfully attempting to obtain legal advice on telephone, and defendant did not "initiate " or "reopen" interrogation by expressing his possible willingness to talk to particular officer in response to police's chief's request that he submit to lie detector test.

State v. Lindsey, 491 So.2d 371 (LA 1986). LSA-R.S. 14:71 (A)(2) Issuing worthless checks - presumption. The statute provides that a presumption exists, as follows: if an offender fails to pay a check within ten days after notice of its nonpayment, it shall be presumptive evidence of his intent to defraud. Prior rulings by the Supreme Court led me to believe that this presumption would be a mandatory presumption, as opposed to a permissive presumption, hence, unconstitutional. The Supreme Court ruled that the statute was ambiguous as to whether it created a mandatory or permissive presumption; therefore, it is interpreted as constitutional and with lenity toward the defendant. The Court recognized that its holding in this case was in conflict with its prior holdings in State v. Williams, 400 So.2d 575, (LA 1981) and State v. McCoy, 395 So.2d 319 (La. 1980). It explained how those cases could be reconciled and interpreted. My lower court ruling was vacated and the matter remanded.

Yount v. Maisano, 616 So.2d 1382, (La. App. 5 Cir. 1993); 620 So.2d 823 (LA 1993). Jury award against homeowner's policy reversed. Exclusion in policy for bodily injury "expected or intended by the insured." Supreme Court reversed, finding the actions of defendant to be an intentional act and excluded from coverage.



Marshall v. Citicorp Mortgage, Inc., 601 So.2d 669, (La. App. 5 Cir. 1992). Summary judgment reversed finding issue of material facts existed. Issue of decreasing credit life for less than loan balance when combined with rule of '78's in rebating finance charge.

Succession of Ziifle, 595 So.2d 776, (La. App. 5 Cir. 1992). Protracted litigation since 1978. A default judgment, taken before Judge Price, the previous judge of Division A, was found to be a nullity; hence, subsequent judgments were set aside.

Tracy v. Travelers Ins. Companies, 594 So.2d 541, (La. App. 5 Cir 1992) reversed trial court on exclusion of coverage on comprehensive general liability policy.

Wills v. State Farm Auto, 578 So.2d 1006, (La. App. 5 Cir. 1991). Reversed granting of summary judgment on whether insured had offered choice of limits for uninsured motorist coverage and affirmatively selected lower limits.

Kuebler v. Martin, 578 So.2d 113, (LA 1991). This is one of two cases argued before me on the same day. In the first, Autin v. Martin, I granted the defendant's relief on all claims and dismissed plaintiff's claims against the banks. The 5th Circuit Court of Appeals affirmed my decision at 576 So.2d 72, writs were denied by the Louisiana Supreme Court on April 11, 1991.

The second case is the one cited. In that case I granted the bank's motions. Likewise, this was affirmed by the appellate court but reversed by the Supreme Court only as to one of the banks finding the general language in plaintiff's petition did state a cause of action as to that one bank.

American Motorist Ins. Co., 579 So.2d 429, (LA 1991); 566 So.2d 121, (La. App. 5 Cir. 1990). Court of Appeals changed the amount of quantum on portions of the award. Supreme Court reversed the Court of Appeals, in part, and the trial court, in part, on different elements of damage award.

Lutz v. Jefferson Parish School, 565 So.2d 1071, (La. App. 5. Cir 1990); 503 So.2d 106, (La. App. 5 Cir. 1987). Judgment granting reduction in workman compensation payments based upon claimant receiving disability

retirement benefits. Reversed, finding statute was prospective only.

Cabral v. National Fire Ins.Co., 563 So.2d 533, (La. App. 5 Cir 1990); writ denied, 567 So.2d 1129. Reversed default judgment because insufficient trial record made by plaintiff.

Succession of Austin, 527 So.2d 483, (La. App. 5 Cir. 1988). Foreign will modified by the trial court to reduce the portion that impinged on the legitime. Court of Appeals reversed finding that subsequent birth and legitimation of children revoked the will.

Augustine v. Griffen, 525 So.2d 540, (La. App. 5 Cir. 1988); writ denied, 532 So.2d 118. Twelve-year old on bike hit by auto. l reduced award by 20% for comparative negligence of child. Court of Appeals changed percentage of negligence on child to 80%.

First National Bank v. Verheugen, et al., 527 So.2d 453, (La. App. 5 Cir. 1988); writ denied 530 So.2d 576. Reversed in part on issue of attorney's fees.

Thibodeaux v. Burton, 525 So.2d 1103, (La. App. 5 Cir.1988); 531 So.2d 767, (LA 1989). Plaintiff left a quadriplegic after an auto accident. Pacific Employer Insurance Company failed to answer. Plaintiff obtained default judgment. Court of Appeals upheld default judgment and refusal of new trial. Supreme Court reversed with 3 dissents, finding an incomplete record was made by plaintiff when he confirmed the default.

Southern States Masonry, Inc. v. J.A. Jones Construction Co., et al., 507 So.2d 198, (LA 1987). Granted exception of prematurity. "Pay when paid" clause of contract between contractor and subcontractor.

Cooper v. Brownlow, 491 So.2d 693, (La. App. 5 Cir. 1986). Ruled Levee District was immune from liability under provision of LSA-R.S. 9:2791 and 2795, on a summary judgment. Court of Appeals ruled question of material facts in dispute which precluded summary judgment.

Administration of Tulane Education, 497 So.2d 27, (La. App. 5, 1986). Suit on tuition. Directed verdict for defendant was reversed finding university's

records admissible. Remanded.

Markey v. Howard, 484 So.2d 165, (La. App. 5 Cir. 1986). Jury's assessment of 30% negligence to plaintiff driver was manifestly erroneous. Appellate Court removed this allocation, in all other particulars affirmed.

(3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

State v. Manuel Caballero, 472 So.2d 85, (La. App 5 Cir., June, 1985); 492 So.2d 1215

State v. Edward Parr, 498 So.2d 103, (La. App 5 Cir., Nov., 1986); writ denied 532 So.2d 113

State v. Antoine Williams, 483 So.2d 626, (La. App 5 Cir., Feb., 1986)

State v. Nolan Grant, 517 So.2d 1151, (La. App 5 Cir., Dec., 1987)

State v. Karen Copeland, 631 So.2d 1223, (La. App. 5 Cir., Jan., 1994)

State v. Darrell Williams, 545 So.2d 651, (La. App. 5 Cir.) writ denied 556 So.2d 53 and 584 So.2d 1157

State v. Jessie Head, 598 So.2d 1202, (La. App. 5 Cir., April, 1992)

State v. Lane Nelson, 105 S.Ct 2050; 459 So.2d 510; *post conviction relief*

See Attachment "B-3"

16. Public office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

Special Counsel, Attorney General  
State of Louisiana

9/10/71 - 10/7/73

Assistant District Attorney  
Parish of Jefferson

2/1/73 - 8/6/84

Both were appointed positions

No unsuccessful candidacies for elective public office

17. Legal career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No.

2. whether you practiced alone, and if so, the addresses and dates;

No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

District Court Judge  
State of Louisiana  
Division A, 24th Judicial District Court

January 1, 1985 - Present

Co-instructor: Loyola School of Law  
Civil Procedure

Spring 1990  
Spring 1991

District Court Judge, Ad Hoc  
State of Louisiana  
Division A, 24th Judicial District Court

August 24, 1984 - January 1, 1985

Instructor: Criminal law and procedure  
St. Mary Dominican College

1982

District Attorney's Office  
 Parish of Jefferson  
 District Atty. John Mamoulides  
 Gretna Courthouse Annex Bldg., 5th Floor  
 Gretna, LA 70053

Assistant District Attorney  
 Supervisor: 2/1/75 - 8/6/84  
 Chief Felony Complaint Div.:  
 10/8/73 - 1/31/75

City Attorney's Office  
 City of Harahan  
 6437 Jefferson Hwy.  
 Harahan, LA 70123

City Attorney  
 7/1/82 - 8/23/84

Porteous & Mustakas  
 3445 North Causeway Blvd.  
 Metairie, LA 70002

Partner  
 April 1980 - August 1984

Porteous, Lee & Mustakas  
 139 Huey P. Long Ave.  
 Gretna, LA 70053

Partner  
 February 1976 - April 1980

Edwards, Porteous & Lee  
 139 Huey P. Long Ave.  
 Gretna, LA 70053

Partner  
 August 1974 - January 1976

Edwards, Porteous & Amato  
 139 Huey P. Long Ave.  
 Gretna, LA 70053

Partner  
 October 1973 - July 1974

Attorney General  
 State of Louisiana  
 P.O. Box 94005  
 Baton Rouge, LA 70804

Special Counsel  
 9/10/71 - 10/7/73

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

General Civil Practice - in private practice & City Attorney  
 Criminal Prosecution - Attorney General & District Attorney



2. Describe the typical former clients, and mention the areas, if any, in which you have specialized.

My clients were all individuals until approximately 1975. Subsequently, my practice consisted of corporate representation in areas such as: maritime defense for barge fleet operations, NLRB appearances, and general corporate representation. Additionally, from 1979 until 1984, I dealt with corporations that developed and operated tank terminal facilities.

As City Attorney, I handled all matters involving the City of Harahan & also prosecuted municipal violations, in the Mayor's Court

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in:
 

(a) federal courts	-	20%
(b) state courts of record	-	80%
(c) other courts	-	0%
3. What percentage of your litigation was;
 

(a) civil	-	50%
(b) criminal	-	50%
4. State the number of cases in court of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

350 plus cases - Sole Counsel, 80%; Chief Counsel, 15%; Associate Counsel, 5%.

5. What percentage of these trials were:
 

(a) jury	40%
(b) non-jury	60%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the names of the court and name of the judge or judges before whom the case was litigated; and
- (c) the individual names, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. Tellepsen Construction Co. et al v. M/S SANTISTA, et al  
Civil Action #75-2249, U.S. District Court, Eastern Dist. of Louisiana  
Section "C", Honorable Alvin Rubin

This matter was tried for the most part; a settlement was reached during trial and an agreement to dismiss was filed prior to rendition of judgment, August 9, 1976.

Capsule summary of case: Ship collision. I handled this case through all pre-trial discovery and pleadings and participated in all conferences with Judge Alvin Rubin with respect to the case. The dock was constructed by my clients, Tellepsen Construction Company and Lagradeur International. This case was noteworthy because it was major litigation involving issues of negligence, and limitation and remoteness of damage claims.

Final Disposition: Settled to my clients' satisfaction.

G. Thomas Porteous, Jr.  
Counsel for Tellepsen Construction Co. & Lagradeur International  
(Sole Counsel)

Opposing Counsel:  
Terriberly, Carroll, Yancey & Farrell  
Walter Carroll, Jr.(retired)  
3100 Energy Centre

1100 Poydras St.  
New Orleans, LA 70163  
(504) 523-6451

2. William E. Cazaubon v. Acme Truck Lines, Inc. and Commercial Union Assurance Company c/w  
William E. Cazaubon v. Ocean Chandler Service, Inc., Daniel S. Barrilleaux and Aetna Casualty and Surety Co.  
Civil Action # 244-229, 24th Judicial District Court, State of Louisiana  
Division "A", Judge Roy Price

Trial on the merits, November 22nd & 23rd, 1982

Chief Counsel for Plaintiff: G. Thomas Porteous, Jr.

Capsule summary of case: This matter concerned a suit for personal injuries resulting from an automobile accident. There were significant questions in regard to: causation of the accident; the extent to which plaintiff's injuries were related to the accident; and the amount of future wages that would justly compensate plaintiff. I was associated to try this matter because of my extensive litigation experience. Final Disposition: Judgment for plaintiff.

Co-Counsel:  
Don Gardner  
6380 Jefferson Hwy.  
Harahan, LA 70123  
(504) 737-6651

Opposing Counsel:  
Rene A. Pastorek  
Ste. 1060  
3900 N.Causeway Blvd.  
Metairie, LA 70002  
(504) 831-3747

Wayne T. McGaw  
 365 Canal Street  
 Room 1870  
 New Orleans, LA 70140  
 (504) 528-2058

3. State of Louisiana v. John J. Storms, III  
 Criminal # 79-1114, 24th Judicial District Court  
 Division "M", Judge Robert J. Burns  
 Citation: 406 So.2d 135, (La. 1981)

Jury Trial, November 26, 27, 28, 29th, 1979.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Count 1 aggravated rape; Count 2, aggravated crimes against nature. This case required the testimony of a ten-year old victim. Case preparation was crucial. This necessitated many visits and meetings with the child in order to gain her trust and confidence which was essential to her trial testimony. When I initially met the victim and her mother, she would not comment. Then, she later made only isolated statements. The child had to be shown the courtroom, where she would be seated and where all the lawyers, defendant and judge would be seated. In advanced preparation for trial, D.A. personnel were placed in the courtroom to simulate the public. Great efforts were made to make the child understand what was about to happen and to make her comfortable and responsive. Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Trial Assistant for State:  
 Assistant District Attorney Arthur Lentini  
 2551 Metairie Road  
 Metairie, LA 70001  
 (504) 838-8777

**Defense Counsel:**

Sam Dalton  
2001 Jefferson Hwy.  
Jefferson, LA 70121  
(504) 835-4289

**Co-Defense Counsel:**

George Troxell  
4330 Canal Street  
New Orleans, LA 70119  
(504) 488-8800

4. State of Louisiana v. Leonard J. Fagot  
Criminal # 76-2116, 24th Judicial District Court  
Division "J", Judge Patrick E. Carr  
Citation: None, defendant died while out on bond prior to appeal.

Jury Trial, December 12, 13, 14, 15, 16, 19th, 1977.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder. This was a major case involving a prominent local lawyer; it received a lot of public attention. The case was made more complex because of the health of defendant. Medical support was provided during trial in the event the defendant required treatment. The appearance of defendant on a stretcher invoked the emotions of the jury and it took considerable perseverance to prevent the jury from being swayed by sympathy. My participation was from the inception of this case. This matter required appearances in Federal Court, prior to trial in State District Court, because of defendant's claim of denial of due process based on his state of health. The Federal District Court denied defendant's claim and favorably commended our procedures and precautionary measures.

Final Disposition: Verdict - Guilty as charged; No appeal; defendant alleged to have committed suicide, body found in trunk of car.

**Co-Counsel for State:**

Assistant District Attorney William Hall  
3500 N. Hullen Street



Metairie, LA 70002  
(504) 456-8692

Defense Counsels:

Robert Broussard (deceased)

Roy Price (deceased)

5. State of Louisiana v. Jan J. Poretto

Criminal # 80-1980, 81-1003, 24th Judicial District Court

Division "G", Judge Herbert Gautreaux

Citation: 468 So.2d 1142, (La. May, 1985); 475 So.2d 314, (La. Sept., 1985)

Jury Trial, November 2, 3, 4, 5, 6th, 1981.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Second Degree Murder and Aggravated Battery. The defendant in this case was a New Orleans policeman. Major question concerning use of certain statements and hypnotic procedures used on the victim/wife by the police. I handled this matter from the initial motion to reduce the bond. This was critical because at this stage we were able to positively connect the defendant with the weapon. Trial preparation was very time consuming because out of state trips were required to secure the presence of a witness. An appearance before a District Court Judge in Annapolis was required to secure the immediate apprehension and transportation of the witness to Louisiana, along with returning this witness to Annapolis.

Final Disposition: Jury Verdict - Guilty as charged; Affirmed.

Co-Counsel for State:

Assistant District Attorney Gordon Konrad

P.O. Box 10890

Jefferson, LA 70181 /or

3900 River Rd., Suite 6

Jefferson, LA 70121

(504) 831-9985

Defense Counsel:

Ralph Whalen  
3170 Energy Centre  
1100 Poydras Street  
New Orleans, LA 70163  
(504) 582-2333

6. State of Louisiana v. James Nolen  
Criminal # 81-4045, 24th Judicial District Court  
Division "J", Judge Jacob Karno  
Citation: 461 So.2d 1073 (La. App. 5th Cir 1984)

Jury Trial, August 12, 13, 14, 15th, 1982.

Sole Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Aggravated rape case involved a vicious attack on a young woman. Defense put the victim's credibility at issue because she voluntarily left with the attacker and she was employed as a bartender. Throughout the trial the defendant remained belligerent, this compelled the trial judge to issue warnings. Use of restrains were later necessitated in order to maintain appropriate trial decorum.

Final Disposition: Jury verdict - Guilty as charged; 5th Cir. Ct of Appeals - Affirmed.

Defense Counsel:

Phil Johnson

(inactive) The Louisiana Bar Association reports no current address for this attorney and could only provide the following telephone number:  
(714) 275-6066

7. State of Louisiana v. Joseph Batiste  
Criminal #71-1081, 24th Judicial District Court  
Division "A", Judge Louis DeSonier  
Citation: 318 So.2d 27 (LA 1975)

Jury Trial, April 10, 11th, 1972.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: Murder. This was the first capital case I tried. The trial involved complex issues of law and fact. Multiple motions to suppress were argued. A photographic line up was suppressed, but the victim's in-court identification was allowed because a sufficient predicate was established to show an independent basis for the identification. Final Disposition: Jury verdict - Guilty of Murder, Death Sentence; Supreme Court - Affirmed conviction, death sentence annulled and set aside per: Furman v. Georgia, 408 U.S. 238; remanded, life imprisonment.

Defense Counsel:

Philip Schoen Brooks

723 Hillary St.

New Orleans, LA 70118

(504) 866-6666

8. State v. Christopher J. Rebstock

Criminal # 82-67, 24th Judicial District Court

Division "A", Judge Roy A. Price

Citation: 413 So.2d 510, (April, 1982); 418 So.2d 1306, (La. Sept 1982)

Motion to Suppress Confession: April 13, 1982.

Chief Counsel: Assistant District Attorney G. Thomas Porteous, Jr.

Capsule summary of case: Defendant charged with: 2nd Degree Murder. The case involved a sixteen year old. Issues of law involving the statements he made to police. There were two statements involved. One was an inculpatory statement made to his father. The other was a recorded confession. The Supreme Court held that the boy's arrest was not illegal and the statement obtained as result of the arrest was admissible since the boy and his father had a short private conversation in police station, free from presence of police. A second recorded confession was suppressed because the court found the defendant did not knowingly and intelligently waive his constitutional rights. Final disposition of case: Defendant pled guilty to manslaughter and received 21 years.

Defense Counsel:  
 Jacob Amato, Jr.  
 901 Derbigny Street  
 Gretna, LA 70053  
 (504) 367-8181

9. Marlex Terminals, Inc. v. Parish of Jefferson, et al.  
 Civil Action # 247-364, 24th Judicial District Court, State of Louisiana  
 Division "A ", Judge Louis G. DeSonier, Jr.

Trial on the summary judgment, December 18, 1980

Sole Counsel: G. Thomas Porteous, Jr.

Capsule summary of case: Petition for mandamus seeking a building permit. Complex litigation involving the rights of the parish government to deprive the applicant of a permit to construct a terminal. The parish government had passed a moratorium on the issuance of permits. The moratorium was challenged on the basis of the parish's failure to properly advertise the notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Opposing Counsel:  
 Alvin J. Dupre, Jr.  
 Suite A, 2701 Houma Blvd.  
 Metairie, LA  
 (504) 454-1061

10. Eppling v. Jon-T Chemical, Inc.  
 Civil Action # , 24th Judicial District Court, State of Louisiana  
 Division "B", Judge Zaccaria  
 Citations: 363 So.2d 1263

Trial on the summary judgment

Sole Counsel: G. Thomas Porteous, Jr. for Defendant

Capsule summary of case: Suit to collect for appraisal fees. Motion for summary judgment on behalf of my client Jon-T Chemicals alleging the doctrine of accord and satisfaction. The case was noteworthy because it was handled in an expedient manner via summary judgment.

Final Disposition: Summary judgment granted; Court of Appeals - Affirmed.

Opposing Counsel:

Thomas Loop  
(deceased)

Additionally, the following ten individuals have recently dealt with me on legal matters within the last five years:

Scott W. McQuaig  
1500 One Galleria Blvd.  
Metairie, LA 70001  
(504) 836-5070

Edward J. Rice, Jr.  
4500 One Shell Square  
New Orleans, LA 70139  
(504) 581-3234

Lawrence J. Centola, Jr.  
650 Poydras St., Ste. 2100  
New Orleans, LA 70130  
(504) 523-1385

Raymond A. Pelleteri  
1539 Jackson Ave., 6th Floor  
New Orleans, LA 70130  
(504) 561-5000

Jay Zainey  
2543 Metairie Road  
Metairie, LA 70001  
(504) 831-6766



Robert Glass  
530 Natchez Street  
New Orleans, LA 70130  
(504) 581-9083

Patricia LeBlanc  
1615 Metairie Road  
Metairie, LA 70005  
(504) 834-2612

Kathryn T. Wiedorn  
3421 N. Causeway Blvd., 9th Floor  
Metairie, LA 70002  
(504) 831-4091

Allan Berger  
4173 Canal Street  
New Orleans, LA 70119  
(504) 486-9481

Joseph R. McMahon, Jr.  
111 Veterans Blvd.  
Heritage Plaza, Ste. 740  
Metairie, LA 70005  
(504) 837-1844

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

State v. Lane Nelson, This matter was before me on defendant's application for post conviction relief. Defendant was earlier found guilty, by a prior court, of first degree murder and sentenced to death. I set aside the death penalty because of ineffective assistance of counsel. Defendant subsequently pled guilty to first degree and he was resentence to life in prison, without

capital punishment. (Attachment "B-3")

Marlex Terminal, Inc. v. Parish of Jefferson, et al., Civil Action # 247-364,  
24th J.D.C., State of Louisiana, Division "A", Judge Louis G. Desbrier, Jr.

The brief represents my sole personal work. Trial on the summary  
judgment, December 18, 1980. Sole Counsel: G. Thomas [?].

Capsule summary of case: Petition for mandamus seeking a building permit.  
Complex litigation involving the rights of the parish government to deprive  
the applicant of a permit to construct a terminal. The parish government had  
passed a moratorium on the issuance of permits. The moratorium was  
challenged on the basis of the parish's failure to properly advertise the  
notice of the moratorium legislation.

Final Disposition: Mandamus granted. Parish was ordered to issue a permit.

Instructor: Criminal Law/Criminal Procedure

For three years, I taught at St. Mary Dominican College. The class was a  
required course in the Criminal Justice program.

Co-instructor: Civil Procedure.

In conjunction with another attorney, I volunteered my time to teach third-  
year law students at Loyola School of Law. The emphasis was not only on  
the written and codified law, but also on the practical application of the law  
during trial proceedings. I taught the course during the Spring term in 1990  
and 1991.

Speaker - Continuing Legal Education. I appeared as a speaker for  
numerous CLE programs, such as: the Jefferson Bar Association, Louisiana  
Judicial College and Louisiana State Bar Association Summer School for  
Lawyers

District Court Judge

State of Louisiana

Division A, 24th Judicial District Court

District Court Judge, Ad Hoc  
State of Louisiana  
Division A, 24th Judicial District Court

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Louisiana State Employee Retirement System. If I am appointed prior to the end of my term, i.e., December 31, 1996, the benefits can only be drawn when I attain age 60.

2. Explain how you will resolve any potential conflict of interest, including the procedures you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the mandates of the Federal Rules of Civil & Criminal Procedure. I will also follow the guidelines of the Code of Judicial Conduct. I will also consider the model codes and recommendation of the ABA which are pertinent.

The only possible areas of conflict of interest would be reviewing cases from Louisiana State Court, 24th Judicial District Court, Division A, during the time I sat or a challenge to the Louisiana State Employee Retirement System. As to the retirement, a conflict could arise only if I remained on the Jefferson bench twelve (12) years, until 1996. If I took the Federal bench prior to this point, I would not be eligible for retirement proceeds until age sixty (60).

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

See Attachment "C"

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See Attachment "D"

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Only the campaign wherein I was elected District Court Judge.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Cannon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

Speaker - Continuing Legal Education. I appear as a speaker for the

CLE programs, such as: the Jefferson Bar Association, Louisiana Judicial College and Louisiana State Bar Association Summer School for Lawyers

Since I took the bench, I invited field trips to Division "A", 24th J.D.C. for school children about once a month. The students would observe the docket and I then speak with them on the working of the court system. Afterwards, I entertain questions to explain either the particular case or the function of the courts.

I have also visited many schools in Orleans and Jefferson Parish to speak on the court systems, the functions and the duties of a judge.

Judging Moot Court Competitions on numerous occasions at Tulane School of Law and Loyola Law School.

I recently participated in the National Institute of Trial Advocacy program at Louisiana State University School of Law

At Loyola School of Law, I volunteered as co-instructor for Civil Procedure for two terms.

To serve the community, since 1978, I continue to be active with the Recreation Department for the Parish of Jefferson in coaching and refereeing.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your



nomination?

No.

Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

Initially, I met with Senator John Breaux to discuss the possibility of being recommended for the federal bench. Both Senators Breaux and Johnston sent my name to the White House and I was recommended.

After completing multiple questionnaires, I was interviewed in Washington by members of the Justice Department, Office of Policy Development.

The FBI and the ABA have also conducted extensive reviews of my credentials and qualifications, along with conducting interviews.

On August 25, 1994, I was officially nominated by the President for the United States District Court, Eastern District of Louisiana.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

Our country, with its three separate and distinct branches of government, has withstood the test of time and the criticism of some. Even though the branches are separate, there will always be occasions when there is interaction among them while still preserving the separation of powers.

We, in the judiciary, have a duty to listen to the facts of a case and render a decision according to law pertinent to those issues. The presentation of the facts are for the litigants and we should always guard against participating in that presentation. A trier of fact should in no way devise, invent or concoct facts; it should rule on the case before it. Unless a question is certified before the court by the Louisiana Supreme Court or any other tribunal properly, it may not render an advisory opinion. Novel questions of law occasionally arise, and they must be dealt with according to the facts before the court. The judiciary must decide cases according to the facts and law as an impartial arbitrator.

In performing our duties there are occasions when our judgments may

be interpreted as judicial activism. When we declare a law unconstitutional and unenforceable that may be interpreted by some as interfering with the legislative function. However, such action is part of our duty and responsibility and is far different from actually legislating.

When we deal with individual grievances, we must be ever mindful to follow judicial precedent and constitutional interpretation. The personal feelings of a judge should never replace sound, established judicial precedent and constitutional interpretation. In instructing juries, I always remind them that "your decision must not be based on bias, prejudice, sympathy or public opinion." We in the judiciary must be ever mindful of this guideline when we are the trier of the facts.

Once a matter is before a court on a trial on the merits, the judiciary's duty is to render our decision solely based on the law and evidence. Prior to trial, a judge may be called upon to counsel or intervene as an unbiased peacemaker, encouraging the parties to be open minded and understanding.

If we attempt to go beyond our role, we may in fact infringe on areas reserved to the other branches of government. If we attempt to do less, we will not be adhering to our oaths and weakening the judicial branch of government. It is always a careful balance.

AO-10  
Rev. 1/83

## FINANCIAL DISCLOSURE REPORT

Report Required  
Reform Act of 1978, Pub. L. No. 95-434, Sec. 101-194; 5 U.S.C.A. App.

Attachment

1. Person Reporting (Last name, first, middle initial)  Porteous (Jr.), Gabriel T.	2. Court or Organization  United States District Court Eastern District of Louisiana	3. Date of Report  8-29-94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  United States District Court Judge	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date 8-25-94 ___ Initial ___ Annual ___ Final	6. Reporting Period  1-1-93 - 8-25-94
7. Chambers or Office Address Division A, 24th Judicial District Ct. Gretna Courthouse - Annex Bldg. Gretna, Louisiana 70053	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___  Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☒

NONE (No reportable positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1	1994 Year to Date	
	Judicial State of Louisiana	\$ 49,206.00
2	Vascular Laboratory, Inc. (S)	\$
3	1993	
	Judicial State of Louisiana	\$ 72,830.58
4	Southern Baptist Hospital (Final balance of annuity, retirement, of my deceased mother)	\$ 381.39
5	Vascular Laboratory, Inc. (S)	\$
	(See Attachment I)	\$

ATTACHMENT I

FINANCIAL DISCLOSURE REPORT (cont'd)      PORTEOUS (JR.), Gabriel T.      8-29-94

## III. NON-INVESTMENT INCOME

1992 Judicial State of Louisiana	\$74,384.26
Southern Baptist Hospital	1,652.64
(Retirement annuity deceased mother)	
Executive Life Insurance of California	3,287.40
(Retirement annuity deceased mother)	
Vascular Laboratory, Inc. (S)	



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Porteous (Jr.), Gabriel T.

Date of Report

8-29-94

**IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.**  
 (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

Exempt

2

3

4

5

6

7

8

**V. OTHER GIFTS.** (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

Exempt

2

3

4

5

6

7

**VI. LIABILITIES.** (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Porteous (Jr.), Gabriel T.

Date of Report

8-29-94

## VII. INVESTMENTS and TRUSTS - income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "X" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period					
	(1) Net Income Code (A-B)	(2) Type (S, U, J, V, etc.) Rent or Int.	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	Exempt					
					(1) Type (e.g., buy, sell, transfer, redemption)	(2) Date Month Day	(3) Value Code (J-P)	(4) Date Code (A-S)	(5) Identify of Buyer/Seller (if private transaction)	
<input checked="" type="checkbox"/> NONE (No reportable income, assets, or transactions)										
1										
2										
3										
4										
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										

1 Income/Date Codes: (See Col. B1 & D4)	A=\$1,000 or less B=\$15,001 to \$50,000 C=\$51,000 or more (See Col. C1 & D1)	B=\$1,001 to \$2,500 C=\$30,001 to \$100,000 D=\$101,001 to \$500,000 E=\$500,001 to \$1,000,000 F=\$1,000,001 to \$5,000,000 G=Over \$5,000,000	C=\$2,501 to \$5,000 D=\$5,001 to \$100,000 E=\$101,001 to \$500,000 F=\$500,001 to \$1,000,000 G=\$1,000,001 to \$5,000,000 H=Over \$5,000,000	D=\$5,001 to \$15,000 E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$500,000 H=\$500,001 to \$1,000,000 I=\$1,000,001 to \$5,000,000 J=Over \$5,000,000
2 Value Codes: (See Col. C1 & D1)	A=\$1,000 or less B=\$15,001 to \$50,000 C=\$51,000 or more	D=\$1,001 to \$2,500 E=\$30,001 to \$100,000 F=\$101,001 to \$500,000 G=\$500,001 to \$1,000,000 H=\$1,000,001 to \$5,000,000 I=Over \$5,000,000	J=\$2,501 to \$5,000 K=\$5,001 to \$100,000 L=\$101,001 to \$500,000 M=\$500,001 to \$1,000,000 N=\$1,000,001 to \$5,000,000 O=Over \$5,000,000	P=\$5,001 to \$15,000 Q=\$15,001 to \$50,000 R=\$50,001 to \$100,000 S=\$100,001 to \$500,000 T=\$500,001 to \$1,000,000 U=\$1,000,001 to \$5,000,000 V=Over \$5,000,000
3 Value Method Codes: (See Col. C2)	U=Unrealized V=Book Value	W=Cost (Real estate only) X=Other	Y=Estimated Z=Unrealized	

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

Porteous (Jr.), Gabriel T.

8-29-94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

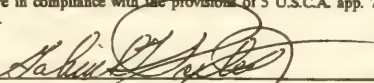
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

September 6, 1994

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

**PERSONAL FINANCIAL STATEMENT**  
**NOTICE** - This statement is designed for use by residents of Louisiana or another community in Louisiana. It is designed to show only your own financial condition. List all of your separate assets and any in which you have an interest, as well as all debts which may be satisfied out of either property. If you are seeking credit jointly with your spouse and your spouse has separate income, your spouse should submit a separate Personal Financial Statement and attach it to this statement.

FOR BANK USE ONLY: OFFICER \_\_\_\_\_ CLERK \_\_\_\_\_ CLERK \_\_\_\_\_ ILR \_\_\_\_\_  
Do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank.

Name	Gabriel Thomas Porteous, Jr.	Employer Name	Judicial Branch, State of Louisiana
Address		Employer Address	301 Loyola Ave.
City, State & Zip		City, State & Zip	New Orleans, Louisiana 70112
Date of Birth	12-15-46	Years with Present Employer	10
Social Security #		Position or Occupation	Judge
Residential Phone		Business Phone	

ASSETS <i>(Do not include assets of questionable value)</i>		In Dollars (omit cents)	LIABILITIES		In Dollars (omit cents)
Cash - (See Schedule 1)			Notes Payable - (See Schedule 8)		
Cash In This Institution	1,500		Notes Payable to This Institution - Secured		
Cash In Other Institutions	1,700		Notes Payable to This Institution - Unsecured	3,614	
U.S. Gov't Marketable Securities - (See Schedule 2)			Other Notes Payable - Secured		
U.S. Gov't Securities			Other Notes Payable - Unsecured		
Money Market Funds and Mutual Funds			Automobile Loans		
Listed Securities (NYSE, ASE, OTC)			Loans Against Margin Accounts - (See Schedule 2)		
Closely Held or Not Actively Traded Securities - (See Schedule 2)			Life Insurance Policy Loans - (See Schedule 3)	2,000	
Cash Surrender Value - Life Insurance Policies - (See Schedule 3)	5,000		Real Estate Mortgages Payable - (See Schedule 5)		
IRA's, Keoghs, Profit Sharing & Other Vested Retirement Accounts - (See Schedule 4)	92,408		Personal Residence	94,000	
Real Estate - (See Schedule 5)			Other Wholly Owned Real Estate		
Personal Residence	225,000		Partially Owned Real Estate		
Other Wholly Owned Real Estate			Oil and Gas Liabilities - (See Schedule 7)		
Partially Owned Real Estate			Credit Card Accounts and Bills Due	37,853	
Real Estate Mortgages Owned - (See Schedule 6)			Loans Due to Partnerships		
Accounts Receivable & Notes Receivable - (See Schedule 6)			Unpaid Income Tax		
Oil and Gas Interests - (See Schedule 7)			Other Unpaid Taxes and Interest		
Deferred Income			Estimated Tax Liability on Assets if Liquidated		
Automobiles	15,000		Other Debts - itemize below		
Other Assets:					
Personal Property	25,000				
Partnership Interests					
			Total Liabilities	137,467	
			Net Worth	228,141	
Total Assets	365,608		Total Liabilities and Net Worth	365,608	

Number of Dependents (not including Spouse): 4 Ages: 23, 21, 19, 13 Marital Status: ☒ Married ☐ Unmarried ☐ Separated

Spouse Information:

Name Carmella Giardina Porteous

Address (if different from applicant)

Employer Name Vascular Laboratory, Inc. Position or Occupation Technician

Employer Address 4320 Houma Blvd., Metairie, Louisiana 70006

Social Security # \_\_\_\_\_ Date of Birth 12-23-48 Business Phone \_\_\_\_\_

If married and domiciled in Louisiana, have you and your spouse executed a contract which varies the legal (Community Property) regime?  
☐ Yes ☒ No If "Yes," attach a copy of such contract.





TRUSTEE OR PLAN ADMINISTRATOR	IN THE NAME OF	TYPE OF ACCOUNT	BENEFICIARY	MARKET VALUE	AMOUNT OF PLAN LOANS	MARKET VALUE LESS PLAN LOANS	ACCESS DATE
State of La.	G. Thomas	Ref.	Carmella Porteous	92,408	0	0	12/15/06
Employees	Porteous, Jr.						or
Retirement							separation
System							from service
					Total		

**SCHEDULE 5 - Real Estate Owned - If not enough space, please attach separate schedule.**

ADDRESS & TYPE OF PROPERTY	% OWNED	TITLE IN NAME OF	YR ACQ'D	COST & IMPRVMTS	PRESENT MARKET VALUE	MORTGAGE BALANCE	LENDER	LOAN MATURITY	ANNUAL LOAN PMT AMT		
PERSONAL RESIDENCE		Mr. & Mrs. G. I.									
Metairie, La.	100	Porteous, Jr.	77	105,000	225,000	94,000	Fidelity	9/2008	9981.84	GROSS ANNUAL INCOME	ANNUAL OPER. EXP (not Incl. loan)
OTHER WHOLLY OWNED REAL ESTATE (Residential or Commercial)											
PARTIALLY OWNED REAL ESTATE											
Totals							Totals				
Your Portion of Market Value and Debt							Your Portion of Income & Expenses				

**SCHEDULE 6 - Accounts Receivable, Mortgage Receivable & Notes Receivable** - If not enough space, please attach separate schedule.

DUE FROM	ORIGINAL AMOUNT	PRESENT BALANCE	B/Y RATE	MATURITY	PAYMENT TERMS	ARE PMTS. CURRENT?	COLLATERAL
Total							

**SCHEDULE 7 - Oil and Gas Interests (Including General Partnership Interests) - If not enough space, please attach separate schedule.**

FIELD NAME, PARISH / COUNTY & STATE	TYPE OF INTEREST	SOURCE OF VALUATION	VALUATION AMT / DATE	PRESIDENT LOAN BAL.	LENDER	ANNUAL PMT. # AMOUNT	GROSS ANNUAL INCOME	ANNUAL CASH OPER. EXP.
<b>Total:</b>						<b>Total:</b>		

**SCHEDULE 8 - Notes Payable (Including all loans, active lines of credit and inactive lines of credit.) - If not enough space, please attach separate schedule.**

NAME OF CREDITOR	TYPE OF FACILITY (Loan or Line)	ORIGINAL LOAN OR LINE AMOUNT	LINER BALANCE	INTEREST RATE	MATURITY DATE	UNSECURED OR SECURED (Lien Collateral?)	ACCOUNT NUMBER
First NBC	Loan	3,614	3,614	6	*	unsecured	
<b>Total:</b>			3,614				

\* Parent Plus Loan for son's education. Payment deferred until graduation.

Please do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank. Do you or your spouse have any...

	YES	NO	With Whom?	Amount
1. Contingent liabilities (as endorser, co-maker or guarantor) on loans to individuals, corporations, partnerships or other business entities?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	First National Bank of St. Bernard	\$ 4,500
2. Outstanding letters of credit or surety bonds?	<input type="checkbox"/>	<input type="checkbox"/>		\$
3. Contingent liabilities on any leases or contracts?	<input type="checkbox"/>	<input type="checkbox"/>		\$
4. Involvement in any pending legal action?	<input type="checkbox"/>	<input type="checkbox"/>		\$
5. Tax obligations past due or contested income tax liens?	<input type="checkbox"/>	<input type="checkbox"/>		\$
6. Judgments, garnishments and attachments pending?	<input type="checkbox"/>	<input type="checkbox"/>		\$
7. Other special debt or circumstances?	<input type="checkbox"/>	<input type="checkbox"/>		\$
Total Contingent Liabilities				\$ 4,500

\*If you answered "yes" to any question in this section, please attach a separate sheet giving complete details.

### GENERAL QUESTIONS

Please do not leave any questions unanswered. Mark N/A ("Not Applicable") in any space which would otherwise be left blank.

	YES	NO
1. Have you or your spouse or any firm in which you were a major owner ever been adjudicated a bankrupt or made a settlement with creditors? If yes, please provide details: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Are any of the assets held in trust, in an estate or in any other name or capacity?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Do any of your assets secure any debts which have not been reported in the preceding schedules?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Do you have a will? If "yes", please indicate name of executor of the estate: _____	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Do you have disability insurance? If "yes", please indicate in the space provided:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Benefit Coverage Terms (Mos.) _____		
Monthly Coverage \$ _____		
Provider _____		
Group or Individual Policy? _____		
6. Do you have professional liability insurance coverage? If "yes", please indicate in the space provided:	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Coverage \$1,000,000 _____		
Provider Herbert L. Jamison & Co. _____		
7. Income tax returns filed through (date): 1993 _____		
Are any returns currently being audited? If "yes", what year(s)? _____	<input type="checkbox"/>	<input type="checkbox"/>

\*If you answered "yes" to any question in this section, please attach a separate sheet giving complete details.

My signature below indicates that I have completed this Personal Financial Statement in consideration of Bank extending or continuing to extend credit to me and/or to others upon my guarantee. I understand that by signing this statement or by submitting it to Bank I have promised and certified that all of the information it contains is true and complete, that all of the assets I have listed are my own property, whether separate or community, and that the valuation of land, property or securities is accurate to the best of my belief.

I agree to give Bank written notice immediately of any change in my name, address or employment, and of any adverse change in the information in this statement or in my financial condition or in my ability to perform my obligations to Bank. If I have not given such written notice, or if I have not submitted a revised version of this statement, then Bank is entitled to conclude that this is a continuing statement, which may be relied upon as a fair and true picture of my financial condition. I further agree that as long as my relationship with Bank continues, I will furnish an updated Personal Financial Statement on at least an annual basis.

I authorize Bank to verify the information contained in this statement by contacting my spouse, my employer and others. You may exchange with, or furnish information to others regarding your credit experience with me and I agree to release you from all liability which may result. I understand that this statement, when submitted, becomes your property, and that you will retain this statement whether or not credit is granted.

Date Signed September 6, 1994

Signature [Signature]

Date Signed \_\_\_\_\_, 19\_\_\_\_

Signature \_\_\_\_\_

Signature of spouse, if spouse is a joint applicant

## JAMES ROBERTSON

## U.S. Senate Questionnaire for Judicial Nominees

## I. BIOGRAPHICAL INFORMATION "PUBLIC"

1. Full name (include any former names used.)

James Robertson

2. Address: List current place of residence and office address(es)

11300 Cushman Road  
Rockville, Maryland 20852

Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037

3. Date and place of birth.

May 18, 1938  
Cleveland, Ohio

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to former Berit Selma Persson. She is a student.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Princeton University, 1955-59, A.B. 1959  
National Law Center, George Washington University,  
1962-65, LL.B. 1965

## JAMES ROBERTSON

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 2

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1965-1969 - Associate, Wilmer, Cutler & Pickering,  
Washington, D.C.  
1969-1972 - Chief Counsel, Lawyers Committee for Civil  
Rights Under Law, Jackson, Mississippi and National  
Director, Washington, D.C.  
1972-1973 - Associate, Wilmer, Cutler & Pickering,  
Washington, D.C.  
1973-present - Partner, Wilmer, Cutler & Pickering,  
Washington, D.C.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes. Active duty. U.S. Navy (destroyers and Office of Naval Intelligence) 1959-1964. Last rank LT, USN. Serial No. 593213. Honorable discharge.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Fellow, American College of Trial Lawyers  
Fellow, American Bar Foundation

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American College of Trial Lawyers  
Member, Committee on Federal Rules of Criminal  
Procedure 1986-91

American Bar Association  
Member, Litigation Section  
Member, Individual Rights and Responsibility Section  
Member, National Conference of Bar Presidents

American Bar Foundation

## JAMES ROBERTSON

U.S. Senate Questionnaire

for Judicial Nominees

Page 3

## District of Columbia Bar

President, 1991-92 (President-elect 1990-91,

Immediate Past President 1992-93).

Member, Board of Governors 1986-90.

Chair, Coordinating Committee on Prisons

and Prisoners 1988-89.

Chair, Budget Committee 1990-91

Bar Association of The District of Columbia

Washington Bar Association

Womens Bar Association of the District of Columbia

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None of the organizations to which I belong are active in lobbying, although some lobbying may be done. The organizations are:

Lawyers' Committee for Civil Rights Under Law

D.C. Lawyers' Committee for Civil Rights and

Urban Affairs

D.C. Conference on Opportunities For Minorities

In The Legal Profession

Lawyers' Club of Washington

Metropolitan Club of Washington, D.C.

Columbia Country Club

Princeton Club of New York

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Superior Court of the District of Columbia (then Court of General Sessions), January 24, 1966

District of Columbia Court of Appeals, January 24, 1966

United States District Court for the District of Columbia, January 24, 1966



JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 4

United States District Court, Eastern District of Michigan,  
 June 20, 1985

United States District Court, District of Arizona,  
 January 11, 1991

United States Court of Appeals for the District of Columbia  
 Circuit, January 28, 1966

United States Court of Appeals for the Eighth Circuit,  
 September 14, 1981

United States Court of Appeals for the Eleventh Circuit,  
 October 1, 1981

United States Court of Appeals for the Second Circuit,  
 October 31, 1984

United States Court of Appeals for the Sixth Circuit,  
 June 20, 1985

United States Court of Appeals for the Fourth Circuit,  
 April 28, 1987

United States Court of Appeals for the Fifth Circuit,  
 March 12, 1993

United States Supreme Court, April 3, 1969

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

James Robertson, *A Tale of Two Committees*, The Washington Lawyer, May/June 1992, at 7

James Robertson, *Commonwealth?*, The Washington Lawyer, March/April 1992, at 8

James Robertson, *Lawyers Helping Lawyers*, The Washington Lawyer, January/February 1992, at 9

**JAMES ROBERTSON**

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 5

James Robertson, *Toward an Integrated, Unified Bar*, The Washington Lawyer, November/December 1991, at 9

James Robertson, *Fight! . . . for [New] D.C.!*, The Washington Lawyer, September/October 1991, at 7

James Robertson, *The Beginning of the End of the Billable Hour?*, The Washington Lawyer, July/August 1991, at 7

James Robertson and R. Nicholas Gimbel, *Representing Problem Defendants in Civil Cases*, Litigation, Winter 1991, at 30

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent  
July 27, 1994

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

None

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

Not applicable.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 6

17. Legal Career:

- a. Describe chronologically your law practice and experience after-graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No

2. whether you practiced alone, and if so, the addresses and dates;

No

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

June 1965 - April 1969  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 Associate

April 1969 - August 1970  
 Lawyers Committee for Civil Rights Under Law  
 233 North Farish Street  
 Jackson, Mississippi 39201  
 Chief Counsel

August 1970 - January, 1972  
 Lawyers Committee for Civil Rights Under Law  
 1450 G Street, N.W.  
 Washington, D.C. 20005  
 Director

January, 1972 - January 1973  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 Associate

JAMES ROBERTSON  
U.S. Senate Questionnaire  
for Judicial Nominees  
Page -

January 1978 - present  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037  
Partner

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

My practice has been almost exclusively litigation, most of it in federal courts. My early litigation experience concerned more regulatory than commercial issues. In the 1980s, I was handling a number of matters involving securities regulation and commercial disputes. More recently, my practice has involved products liability, insurance coverage, and general commercial disputes. I handled a number of court-appointed criminal assignments in the late 1960s, did criminal work in Mississippi, and tried a major white collar criminal case in 1984-85. Interspersed in this practice has been a continuous string of pro bono matters, mostly relating to civil rights.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I have generally represented corporations that are clients of my law firm rather than personal clients. They have included manufacturers of automobiles and pharmaceuticals, television networks, insurance companies, law firms, physicians, business entities of all kinds, and individuals.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

The frequency of my appearances in court has varied. In the last several years, "occasional" probably best describes the frequency, partly because of my heavy involvement in bar work and partly because, with increasing seniority, the client expectation is that routine in-court

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 8

matters will be handled by more junior lawyers. Between my return to private practice in 1972 and about 1989 or 1990, my court appearances were much more frequent.

2. What percentage of these appearances was in:

- (a) federal courts; 95%
- (b) state courts of record; 5%
- (c) other courts.

3. What percentage of your litigation was:

- (a) civil; 95%
- (b) criminal. 5%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I estimate that I have tried approximately 30 cases to judgment or verdict, most of them as chief counsel.

5. What percentage of these trials was:

- (a) jury;
- (b) non-jury.

Of the cases tried to verdict or judgment, the ratio has been approximately 80% non-jury and 20% jury.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and (c) The individual name, addresses, and telephone numbers of



## JAMES ROBERTSON

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 9

co-counsel and of principal counsel for each of the other parties.

1. Case: NAACP, et al. v. Claiborne Hardware Company, et al., 458 U.S. 886 (1982).

Justices of the United States Supreme Court and Judges of the Mississippi Supreme Court

Date(s): 1982

Opposing Counsel: Dixon L. Pyles  
101 North State Street  
Jackson, Mississippi 39201  
(601) 354-5668

Co-counsel: The Honorable Lloyd N. Cutler  
Special Counsel to the President  
The White House  
Washington, D.C. 20500  
(202) 456-2632

The Honorable Nathaniel R. Jones  
U.S. Court of Appeals for the Sixth  
Circuit  
432 U.S. Post Office & Courthouse  
Cincinnati, Ohio 45202  
(513) 684-2921

Summary: This was an action by retail businessmen in Port Gibson, Mississippi against NAACP and civil rights boycott organizers, for damages to their businesses. Judgment was rendered against defendants in Chancery Court of Hinds County, Mississippi and affirmed by the Mississippi Supreme Court. In the U.S. Supreme Court, the question was whether peaceful civil rights boycott activity was constitutionally protected. In a landmark opinion, the judgment below was reversed. I represented the NAACP. I had initial responsibility for this case at the trial court level but left Mississippi before it was tried. I had principal responsibility for the Mississippi Supreme Court appeal (briefing and argument) and for the petition for certiorari and brief on the merits in the U.S. Supreme Court.

JAMES ROBERTSON  
U.S. Senate Questionnaire  
for Judicial Nominees  
Page 10

2. Case: INS v. Elias-Zacarias, 112 S.Ct. 812

Justices of the United States Supreme Court

Date(s): 1992

Opposing Counsel: Maureen E. Mahoney  
(then at Department of Justice)  
Latham & Watkins  
1001 Pennsylvania Avenue, N.W.  
Suite 1300  
Washington, D.C. 20004  
(202) 637-2200

Co-counsel: Carol F. Lee  
General Counsel  
Export-Import Bank of the United States  
811 Vermont Avenue, N.W.  
Washington, D.C. 20571  
(202) 566-8334

Summary: A 17-year old Guatemalan sought asylum in the U.S. after refusing to join the guerilla army and after being threatened by guerrillas. He asserted that he did not want to fight against his own country but feared for his life if he did not do so. He was denied asylum by the INS. The 9th Circuit reversed. The Solicitor General sought certiorari to test the meaning of the statutory standard for asylum "well grounded fear of persecution on account of political opinion." The Supreme Court reversed, holding that the facts have established a well-grounded fear of persecution, but not that such persecution would be "on account of . . . political opinion." I was counsel of record (in the Supreme Court only), delivered the oral argument, and co-authored the brief on the merits.

3. Case: Green v. Connally, U.S. District Court for D.C., No. 1355-69, 330 F. Supp. 1150 (1971), aff'd *per curiam* sub nom.; Coit v. Green, 404 U.S. 997 (1971)

Judges Harold Leventhal, Joseph Waddy and John H. Pratt (3 judge court)

Date(s): 1970-71

**JAMES ROBERTSON**

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 11

Opposing Counsel: Johnnie M. Walters (then Tax Division,  
Department of Justice)  
Leatherwood Walker Todd & Mann, P.C.  
100 East Coffee Street  
Greenville, South Carolina 29602  
(803) 242-6440

Co-counsel: Professor Frank R. Parker  
D.C. School of Law  
719 13th Street, N.W.  
Washington, D.C. 20005  
(202) 727-5225

Summary: Civil rights action brought by Lawyers' Committee for Civil Rights to invalidate tax exempt status of Mississippi private schools that had been formed to avoid court-ordered desegregation. The decision in this case was an important development in tax and constitutional law. I was co-lead counsel while at the Lawyers' Committee and on brief thereafter.

4. Case: Carr v. Conoco, U.S. District Court for Northern District Mississippi, 295 F. Supp. 1281 (N.D. Miss. 1969), 423 F.2d 57 (5th Cir. 1970)

Judge Orma R. Smith

Date(s): 1969-70

Opposing Counsel: Robert D. Patterson  
Patterson & Patterson  
304 East Jefferson Street  
Aberdeen, Mississippi 39370  
(601) 369-2476

Co-counsel: Robert B. Fitzpatrick  
Fitzpatrick & Verstegen  
Universal Building North, Suite 1140  
Washington, D.C. 20009  
(202) 588-5300

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 12

Summary: Employment discrimination case brought by employees of plastic garden hose factory challenging, among other things, the lawfulness of a written employment test. This was one of the early class actions brought by the Lawyers Committee for Civil Rights under Title VII of the Civil Rights Act of 1964. The trial court decision, affirmed on appeal by the Fifth Circuit, established that a plaintiff class comprising both unsuccessful applicants for employment and successful ones (employees) could be represented by persons who had been unsuccessful applicants. I was co-counsel for the named plaintiff and class representative.

5. Case: Shannon Pease, et al. v. American Cyanamid Company, U.S. District Court for the District of Maryland, 795 F. Supp. 755 (D. Md. 1992).

Judge J. Frederick Motz

Date(s): 1992

Opposing Counsel: Gary I. Strausberg, Esquire  
 Janet & Strausberg  
 Executive Centre at Hooks Lane  
 8 Reservoir Circle, Suite 200  
 Baltimore, Maryland 21208  
 (410) 653-3200

Co-counsel: Juanita A. Crowley  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 (202) 663-6207

Roger W. Yoerges  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 (202) 663-6122

Summary: Action by minor child and her mother as next friend for damages arising out of alleged defect in defendant's pertussis vaccine. The child had suffered seizures following vaccination and had extremely retarded development thereafter. I represented the defendant manufacturer. The court granted summary judgment for defendant, rejecting plaintiff's proffered expert testimony, 4

## JAMES ROBERTSON

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 13

finding a strong consensus in the scientific community that the vaccine was not defective, and declining to submit that scientific issue to the jury. I was lead counsel and co-authored the dispositive motion.

6. Case: U.S. v. General Motors Corp., General Motors Corp. v. Claude S. Brinegar, U.S. District Court for D.C., Nos. 74-277, 74-1053 (1976), 561 F.2d 923 (D.C. Cir. 1977).

Judge Oliver Gasch

Date(s): 1974

Opposing Counsel: Jeffrey F. Axelrad  
Department of Justice  
Constitution Avenue between  
9th and 10 Streets  
Washington, D.C. 20530  
(202) 501-7075

Co-counsel: Michael L. Burack  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037  
(202) 663-6029

Summary: Action by the government for injunction, and by General Motor for declaratory judgment. The government claimed that failures of a portion of the steering mechanism in 1959 Cadillacs was a defect relating to motor vehicle safety and demanded that the vehicles be recalled for repairs. This was the first merits trial under the National Highway and Traffic Safety Act of 1966 and required interpretation of the statutory phrase "unreasonable risk of accident, injury or death." I successfully represented the auto manufacturer at trial and presented some of the earliest expert testimony ever received on scientific risk analysis. I was lead counsel at trial and on the appeal, where the judgment for the manufacturer was reversed.

7. Case: Abell v. Elmer, U.S. District Court for D.C., No. 84-3706, 1985 WL 5836

Judge Gerhard A. Gesell



JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 14

Date(s): tried (non-jury) September 1985

Opposing Counsel: John F. Conroy  
 Gordon & Barnett  
 1133 21st Street, N.W.  
 Suite 450  
 Washington, D.C. 20036  
 (202) 833-3400

Co-counsel: Robert B. McCaw  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 (202) 663-6586

Summary: Action by investors in children's theme restaurant franchises against lawyers who had represented them in transactions acquiring the franchises. The complaint charged fraud, malpractice, and violations of RICO, securities, and Maryland state franchise acts. The significance of this case was probably greatest to the two lawyer defendants, whose professional reputations were at stake. The opinion of the trial court vindicated them completely.

8. Case: U.S. v. Keplinger, et al., U.S. District Court, Northern District Illinois, Eastern Division, No. 81 CR 235

Judge John A. Nordberg

Date(s): 1984

Opposing Counsel: Scott R. Lassar (then Asst. U.S. Attorney)  
 Keck, Mahin & Cate  
 77 West Wacker Drive, Suite 4900  
 Chicago, Illinois 60601  
 (312) 634-7700

Co-counsel: Thomas D. Decker  
 Thomas D. Decker & Associates  
 135 South LaSalle Street, Suite 853  
 Chicago, Illinois 60603  
 (312) 263-4180

## JAMES ROBERTSON

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 15

Harvey M. Silets  
Katten Muchin & Zavis  
525 West Monroe Street, Suite 1600  
Chicago, Illinois 60661  
(312) 902-5200

Summary: Industrial Bio-test laboratory in Illinois performed independent toxicology tests for submission to U.S. government regulatory agencies (FDA, EPA). When several test reports appeared false or fabricated, top officers of IBT were indicted on multiple counts of mail fraud. I was trial counsel for Paul Wright, a toxicologist. The complex trial lasted seven months, and Dr. Wright was convicted on one of eight counts. The conviction was affirmed by an appellate decision allowing use of hypnotically-induced recall testimony, 776 F.2d 678 (7th Cir. 1985).

9. Case: Charles Woods Television Corp. v. Cap Cities/ABC, Inc., U.S. District Court for Western District of Missouri, affirmed, 869 F.2d 1155 (8th Cir. 1989)

Judge Russell G. Clark

Date(s): 1988

Opposing Counsel: Gary R. Cunningham  
Lilly, Dalton, Powell &  
Cunningham  
3171 East Sunshine  
P.O. Box 10306 G.S.  
Springfield, Missouri 65808  
(417) 882-9600

Co-counsel: Thomas F. Connell  
Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037  
(202) 663-6257

Summary: Plaintiff purchased a television station in Springfield, Missouri upon the belief that he would receive the affiliation of the ABC television network. When that affiliation was not granted, he sued ABC for fraudulent misrepresentation. The jury returned a verdict for plaintiff, but the trial court granted defendant's motion

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 16

for judgment n.o.v. The case turned importantly on the meaning of internal corporate documents and upon testimony tending to negate plaintiff's claim of reliance.

10. Case: Bayly Corp. v. Marantette, U.S. District Court for D.C., Nos. 82-2255 and 2256 (1982 WL 1314)

Judge John H. Pratt

Date(s): 1982

Opposing Counsel: John C. Fricano (deceased)  
 Rodney O. Thorson  
 Skadden Arps Slate Meagher & Flom  
 1440 New York Avenue, N.W.  
 Washington, D.C. 20005  
 (202) 872-6896

Co-Counsel: Stephen M. Truitt  
 Pepper, Hamilton & Scheetz  
 1300 19th Street, N.W.  
 Washington, D.C. 20036  
 (202) 828-1200

Fletcher L. Yarbrough  
 Carrington, Coleman, Sloman  
 & Blumenthal L.L.P.  
 200 Crescent Court, Suite 1500  
 Dallas, Texas 75201  
 (214) 855-3000

A. Stephen Hut, Jr.  
 Wilmer, Cutler & Pickering  
 2445 M Street, N.W.  
 Washington, D.C. 20037  
 (202) 663-6235

Summary: Defendant, a stockbroker, acquired 15% of the outstanding common stock of a publicly-held company allegedly for "green mail" purposes, and the company later sued to restrain him and other defendants from voting their shares in a proxy contest. I represented defendant. The complaint alleged violations of the federal securities laws and asserted that numerous defendants had unlawfully formed a "group" under Section 13(d), 15 U.S.C. 78M(d). RICO violations were also alleged. This was one of a series of

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 17

high-speed takeover cases brought during the 1980s. The cases gave shape to the requirements of the Williams Act, which requires disclosure of the control intentions of investors.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

In the foregoing section, I listed litigated matters that were actually tried or that were otherwise disposed of by motion. The majority of my practice, however, has involved the litigation of complex matters that should have been and in fact were settled.

One category of cases I have litigated actively involves the federal securities laws. It includes both hostile takeover litigation (of which Bayly v. Marantette, described under question 18 was an example) and class actions brought under Rule 10b5 and applicable statutory provisions presenting claims of fraud or failure to disclose material facts. The most publicly visible of the hostile takeover litigation was the effort by Boone Pickens and his corporate entity to acquire Unocal Corporation. In that case, I was lead counsel in a federal court litigation in California representing Unocal in one aspect of the overall conflict, while my partners were engaged in Delaware Chancery Court. In these cases, I represented both "acquirors" and "targets." Securities class actions are typically settled and rarely tried. I have been lead counsel in a number of these cases, mostly involving investments in oil and gas limited partnerships (or similar entities).

Another category of cases in which I have been actively involved is products liability, mostly involving pharmaceutical products, and specifically vaccines. These cases, in all of which I have acted as lead counsel, have typically involved detailed discovery and motions practice before settlements could be negotiated.

A third category of cases, in which I have been actively involved in recent years, has been insurance coverage disputes, invariably involving claims by corporate entities against their insurers for indemnity when the corporations

JAMES ROBERTSON  
U.S. Senate Questionnaire  
for Judicial Nominees  
Page 18

themselves have incurred liability for environmental damage, massive product failures, or injuries to persons and property from asbestos and other toxic substances. In these massive cases, the litigator must find rational and efficient methods of case management and achieve settlement for the client as soon as possible. I have negotiated or helped to negotiate major settlements in cases brought against CIGNA Companies by W.R. Grace & Co., Potomac Electric Power Company, and Hoechst-Celanese Corporation.



JAMES ROBERTSON  
U.S. Senate Questionnaire  
for Judicial Nominees  
Page 19

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I am eligible for retirement under the Wilmer, Cutler & Pickering Retirement Plan. The Wilmer, Cutler & Pickering Retirement Plan provides essentially for a retiring partner to receive monthly payments for the rest of the partner's life, provided only that the partner does not directly compete with Wilmer, Cutler & Pickering in the practice of law. Payments are calculated at the time of a partner's retirement and are fixed at an amount which (annually) equals 25 percent of the partner's average annual income for the partner's last three years. There is no occasion for upward adjustment of retirement payments, except that adjustments will be made to reflect increases in the cost of living if and to the extent cumulative inflation exceeds 4 percent in a year. There is no occasion for downward adjustment, except that the firm's annual obligation to all retired partners together is capped at 5 percent of firm income. The Retirement Plan has no provision for payment of a lump sum in lieu of periodic payments.

The Wilmer, Cutler & Pickering Retirement Plan also provides that, upon my ceasing to be a partner in Wilmer, Cutler & Pickering, I will be paid the amount of my capital account in twelve monthly installments.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will establish procedures to identify those litigants or counsel whose appearances before me raise actual or potential conflicts of interest. I will immediately recuse myself where recusal is required by the Code of Judicial

**JAMES ROBERTSON**

U.S. Senate Questionnaire  
for Judicial Nominees

Page 20

Conduct. If I am uncertain about the existence of a conflict, or about whether the appearance of whether a conflict might arise, I will notify the parties of the relevant facts and invite their suggestions or motions.

During my initial period of service, I would expect to recuse myself from insurance coverage disputes involving any of the CIGNA Companies, any disputes involving health care issues and Prudential Insurance Company, and any disputes involving American Cyanamid Company. I would inquire into the substance of any matter in which a litigant was a client of my firm at or before the time of my departure. I would expect to recuse myself from any matter involving partners of my law firm, either as litigants or as counsel.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Form AO-10, Financial Disclosure Report, is attached.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

Net Worth Statement and schedules are attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I worked on the periphery of the Clinton-Gore Campaign in 1992, doing miscellaneous legal chores for the Democratic Lawyers' Council. I did a brief bit of advance work for the Humphrey Campaign, in Pennsylvania, in 1968. I had no title in either campaign.

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 21

### III. GENERAL PUBLIC

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

In various community and Bar capacities I have worked to improve the organization and delivery of legal services to the disadvantaged in a number of ways, including:  
 (a) serving on a special D.C. Bar committee to study, improve and redesign the public services activities of the Bar; (b) continuous membership for more than 20 years on the boards of the national Lawyers' Committee and the D.C. Committee for Urban Affairs; (c) serving on the boards of the Public Defender Service of the District of Columbia and the D.C. Prisoners' Legal Services Project, Inc.

I have engaged in other civic activities, including:  
 (a) leadership of the formation of a community-based project to study and promote the development of community corrections in the District of Columbia; (b) convening a D.C. Conference on Opportunities for Minorities in the Legal Profession, seeking to increase and solidify positions of minority lawyers in the District of Columbia and  
 (c) organizing and appointing the first leaders of a new task force that has subsequently launched a D.C. Anti-Drug Coalition.

I served as chairman of the Wilmer, Cutler & Pickering Pro Bono Committee for several years. I have regularly undertaken pro bono representation (in more recent years, involving mainly the supervision and mentoring of younger lawyers doing pro bono work). For the last several years, the number of hours per year reflected in my time records as pro bono has been on the order of 10 percent.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal

JAMES ROBERTSON  
 U.S. Senate Questionnaire  
 for Judicial Nominees  
 Page 22

membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

No. I joined Columbia Country Club in 1980. At that time the membership policies of the club were non-discriminatory but no African-Americans were yet members, and women could not join as members (although there were women members who had maintained membership after a divorce or the death of a spouse). Today the membership includes African-American and Hispanic members, and women can and do become members in their own right.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

A D.C. Federal Nominations Commission was appointed by Congresswoman Eleanor Holmes Norton to recommend candidates. The Commission has been in being since early 1993. It gave public notice of the opportunity to apply, and I made formal application in April 1993. I was interviewed by the full Commission in the summer of 1993 and by Congresswoman Norton in September 1993, after my name was forwarded to her as one of eight potential nominees for the four vacancies that then existed. I was not selected as one of the four nominees recommended to the President on that occasion, but the process was repeated for an additional vacancy that occurred upon the death of Judge George Revercomb. For this vacancy, I was again interviewed by the Commission and mine was one of five names forwarded to Congresswoman Norton. I was notified on July 13, 1994 that Congresswoman Norton had recommended my appointment to the President. I was thereafter interviewed by the Deputy Assistant Attorney General, Office of Policy Development; by a representative of the American Bar Association; and by a Special Agent of the Federal Bureau of Investigation and have been informed that my nomination has gone or will soon go forward to the Senate.

## JAMES ROBERTSON

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 23

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The three branches of the federal government are assigned different and separate roles by the Constitution. The role of the courts is to decide the cases properly brought before them. In carrying out their assigned role and maintaining the constitutionally mandated separation of powers, district courts have very little room for "judicial activism." They are required by two hundred years of precedent to be sure of their jurisdiction -- not only that there is personal and



**JAMES ROBERTSON**

U.S. Senate Questionnaire  
for Judicial Nominees  
Page 24

statutory subject matter jurisdiction, but also that the litigants before them have standing to bring their claims; and that the claims are ripe for decision. Precedent is joined by common sense and experience and teaches a more practical lesson about "judicial activism": judges acting as judges do not make effective administrators, and they certainly do not have the votes to pass laws.

If my nomination is confirmed by the Senate, I expect that my "activism" will be in the area of seeking to bring about the speedy, fair and efficient conclusion of disputes properly brought before me.

Application for Judicial Appointment  
 Applicant's Name James Robertson  
 Attachment to Senate Form, No. 11.4.

AO-10  
 Rev. 1/93

# FINANCIAL DISCLOSURE REPORT

Revised Act. of 1989, Pub. L. No. 101-194, November 30, 1989  
 (5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  ROBERTSON, JAMES (N)	2. Court or Organization  U.S. District Court for the District of Columbia	3. Date of Report  9/14/94
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)  Judge (active)	5. Report Type (check appropriate type) <input type="checkbox"/> Nomination, Date <input type="checkbox"/> Initial <input type="checkbox"/> Annual <input type="checkbox"/> Final	6. Reporting Period  1/1/93-8/31/94
7. Chambers or Office Address  2445 M Street, N.W. Washington, D.C. 20037	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations <input type="checkbox"/> Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

<input type="checkbox"/> NONE (No reportable positions)	
Partner	Wilmer, Cutler & Pickering
President, Treasurer	Southern Africa Legal Services and Legal Education Project, Inc.
Trustee	St. Mark Elderly Housing, Inc.
Director	D.C. Lawyers Committee for Civil Rights and Urban Affairs
Director	Public Defender Service of D.C.

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

<input type="checkbox"/> NONE (No reportable agreements)	
Current	Partners of Wilmer, Cutler & Pickering (Attachment 1)
_____	_____
_____	_____

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

<input type="checkbox"/> NONE (No reportable non-investment income)	
1	Wilmer, Cutler & Pickering partnership income \$ 665,670
2	\$ _____
3	\$ _____
4	\$ _____
5	\$ _____
	\$ _____

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

ROBERTSON, JAMES (N)

9/14/94

## IV. REIMBURSEMENTS and GIFTS — transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

2

3

4

5

6

7

8

## V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

2

3

4

\$

\$

\$

\$

## VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☐

NONE (No reportable liabilities)

1

Crestar Bank, N.A.

Unsecured Note (J)

M

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less    K = \$15,001 to \$50,000    L = \$50,001 to \$100,000    M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000    O = \$500,001 to \$1,000,000    P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

ROBERTSON, JAMES (N)

9/14/94

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets) Indicate, where applicable, owner of the asset by using the parenthetical (J) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child. Place (X) after each asset except from prior disclosure.	B. Income during reporting period	C. Gross value at end of reporting period	D. Transactions during reporting period						
	(1) Amt. Code (A-S)	(2) Type (dis., rent or int.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, margin, redemption)	(2) Date: Month- Day	(3) Value Code (J-P)	(4) Gain Code (A-S)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
<u>GOV'T &amp; GOV'T AGENCIES</u>									
1 Fed. Home Ln Mtg. Corp.	B	int.	K	T					
2 FNM	D	int.	L	T					
3 Tenn. Valley Auth. Pwr. Bd.	C	int.	K	T					
4 U.S. Treas. Notes	D	int.	M	T					
<u>CORPORATE OBLIGATIONS</u>									
6 Balt. Gas & Elec. Co.	D	int.	K	T					
7 GMAC	D	int.	L	T					
8 ITT	C	int.	K	T					
9 JC Penney	D	int.	K	T					
10 Private Expt. Fdg. Corp.	C	int.	K	T					
11 Republic N.Y. Corp.	C	int.	K	T					
<u>PREFERRED STOCK</u>									
13 Innerstep	NO	NE	K	W					
<u>EQUITY STOCK</u>									
15 AT&T	A	div.	J	T					
16 Alexander & Baldwin Inc.	A	div.	J	T					
17 American Gen. Corp.		NONE	J	T					
18 Am. Hme Prods. Corp.	A	div.	J	T					
19 Am. Natl Ins Co		NONE	J	T					
20 Archer Daniels	A	div.	K	T					

1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000  
 (See Col. B1 & B4) E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=more than \$1,000,000  
 2 Value Codes: A=\$15,000 or less B=\$15,001 to \$50,000 C=\$50,001 to \$100,000 D=\$100,001 to \$500,000 E=\$500,001 to \$1,000,000 F=more than \$1,000,000  
 (See Col. C1 & C3) G=\$250,001 to \$500,000 H=\$500,001 to \$1,000,000 I=more than \$1,000,000  
 3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Book Value U=Other V=Estimated W=Market  
 (See Col. C2)

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
ROBERTSON, JAMES (N)	9/14/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

---

---

---

---

---

---

---

---

---

---

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature James RobertsonDate 9/14/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



JAMES ROBERTSON  
Form AO-10

September 14, 1994

Attachment 1

Supplemental Answer to Item II.

I am eligible for retirement under the Wilmer, Cutler & Pickering Retirement Plan. The Wilmer, Cutler & Pickering Retirement Plan provides essentially for a retiring partner to receive monthly payments for the rest of the partner's life, provided only that the partner does not directly compete with Wilmer, Cutler & Pickering in the practice of law. Payments are calculated at the time of a partner's retirement and are fixed at an amount which (annually) equals 25 percent of the partner's average annual income for the partner's last three years. There is no occasion for upward adjustment of retirement payments, except that adjustments will be made to reflect increases in the cost of living if and to the extent cumulative inflation exceeds 4 percent in a year. There is no occasion for downward adjustment, except that the firm's annual obligation to all retired partners together is capped at 5 percent of firm income. The Retirement Plan has no provision for payment of a lump sum in lieu of periodic payments.

The Wilmer, Cutler & Pickering Retirement Plan also provides that, upon my ceasing to be a partner in Wilmer, Cutler & Pickering, I will be paid the amount of my capital account in twelve monthly installments.

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

ROBERTSON, JAMES (N)

Date of Report

9/14/94

## VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical "(S)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	If not exempt from disclosure				
	Asset Code (A-S)	Type (div., int., etc.)	Value Code (J-P)	Value Method Code (Q-W)	(1) Type (a-g, l, m, n, o, p, q, r, s, t, u, v, w, x, y, z)	(2) Date Month Day	(3) Value Code (J-P)	(4) Gain Code (A-S)	(5) Identity of buyer/seller (if private transaction)
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Bell Atl Corp	A	div.	J	T					
2 Boeing Co	A	div.	J	T					
3 Cable & Wireless	A	div.	J	T					
4 Carr Realty Corp	NONE		J	T					
5 Con Nat Gas Co	A	div.	J	T					
6 GTE Corp	A	div.	J	T					
7 Hershey Foods Corp	A	div.	J	T					
8 ELI Lilly	NONE		J	T					
9 Mellon Bank Corp	A	div.	J	T					
10 Mercantile Bnkshrs	NONE		J	T					
11 JP Morgan	A	div.	J	T					
12 Nestle SA	A	div.	K	T					
13 Pacificorp	A	div.	J	T					
14 Pepsico Inc	NONE		J	T					
15 Procter & Gamble Co	NONE		J	T					
16 Roche HLDG Ltd	A	div.	J	T					
17 Royal Dutch Pete Co	A	div.	K	T					
18 Salomon Brothers Fund	A	div.	K	T					
19 Telefonica De Espana SA	A	div.	J	T					
20 Wash. Gas Lt Co	A	div.	J	T					

1 Income/Gain Codes:	A=\$1,000 or less (See Col. B1 & B4)	B=\$1,001 to \$2,500 B=\$25,001 to \$50,000	C=\$2,501 to 5,000 C=\$100,001 to \$1,000,000	D=\$5,001 to \$15,000 D=more than \$1,000,000
2 Value Codes:	J=\$15,000 or less (See Col. C1 & D3)	K=\$15,001 to \$50,000 K=\$250,001 to \$500,000	L=\$50,001 to \$100,000 L=\$500,001 to \$1,000,000	M=\$100,001 to \$250,000 M=more than \$1,000,000
3 Value Method Codes:	Q=Appraisal (See Col. C2)	R=Book Value	S=Assessment S=Cost (real estate only) V=Other	T=Cash/Market W=Estimated

Attachment 2

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting	Date of Report
ROBERTSON, JAMES (N)	9/14/94

## VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parentheticals: "(S)" for joint ownership of reporting individuals, and spouse, "(DC)" for separate ownership by spouse, "(PC)" for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1) Amt. Code (A-H)	(2) Type (e.g., div., rent or lst.)	(1) Value Code (J-P)	(2) Value Method Code (Q-W)	(1) Type (e.g., buy, sell, margin, reassignment)	If not exempt from disclosure			
						(2) Date: Month/Day	(3) Value Code (J-P)	(4) Gain Code (A-H)	(5) Identity of Buyer/Seller (if private transaction)
<input type="checkbox"/> NONE [No reportable income, assets, or transactions]									
1 Weingarten Rlty Inves	A	div.	J	T					
2 Western Invnt Real Est	A	div.	J	T					
3 Chev Chase Bank (S)	B	int.	E	T					
4 (acct. of Berit P. Robertson)									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes:	A=\$1,000 or less (see col. B1 & D4)	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000 I=\$15,001 to \$50,000	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000 L=\$50,001 to \$100,000	D=\$5,001 to \$15,000 H=more than \$1,000,000 M=\$100,001 to \$250,000
2 Value Codes:	J=\$15,000 or less (see col. C1 & D3)	K=\$250,001 to \$500,000	O=\$500,001 to \$1,000,000 P=more than \$1,000,000	
3 Value Method Codes:	Q=Appraisal (See col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

## NET WORTH

As of September 14, 1994

ASSETS		LIABILITIES	
Cash on hand and in banks	16 311 00	Notes payable to banks—secured	
U.S. Government securities—add schedule		Notes payable to banks—unsecured	115 00000
Listed securities—add schedule		Notes payable to relatives	
Unlisted securities—add schedule		Notes payable to others	
Accounts and notes receivable:		Accounts and bills due	16 55800
Due from relatives and friends		Unpaid income tax	
Due from others		Other unpaid tax and interest	
Doubtful		Real estate mortgages payable—add schedule B	788 68400
Real estate owned—add schedule A	1,260 000 00	Chattel mortgages and other liens payable	
Real estate mortgages receivable		Other debts—itemize:	
Autos and other personal property			
Cash value—life insurance			
Other assets—itemize:			
Wilmer, Cutler & Pickering	160 000 00		
401(K) assets (attached)	846 597 00		
Total assets	2,282 908 00	Total liabilities	920 242 00
		Net worth	1,362 666 00
		Total liabilities and net worth	2,282 908 00
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	SEE NOTE	Are any assets pledged? (Add schedule.)	
On leases or contracts		Are you defendant in any suits or legal actions?	
Legal Claims		Have you ever taken bankruptcy?	
Provision for Federal Income Tax			
Other special debt			

Principal residence, Rockville, MD	\$ 575,000
Farm, second home, Bozman, MD	685,000
	<u>\$1,260,000</u>

Citicorp Mortgage	\$ 295,687
Prudential Mortgage	492,997
	<u>\$ 788,684</u>

NOTE: As a partner of Wilmer, Cutler & Pickering, I have signed a Partner's Contribution Agreement that establishes a formula for contributions among partners of the firm in the event such contribution is necessary.

Application for Judicial Appointment  
Applicant's Name James Robertson  
Attachment to Senate Form, No. 11.5.

RIGGS FINANCIAL SERVICES GROUP

STATEMENT OF ACCOUNT  
FROM  
THE RIGGS TRUST GROUP

ACCOUNT NAME: WILMER CUTLER - JAMES ROBERTSON

ACCOUNT NUMBER: 01478465

ADMINISTRATOR: MARCIA M. REED

REPORT DATE: AUGUST 31, 1994

REPORT SPAN: MONTHLY

WILMER CUTLER & PICKERING  
ATTN: GERRY KUNTILA  
2445 M. STREET, N.W.  
WASHINGTON, DC 20037

 RIGGS

COVER PAGE



ASSET SUMMARY  
WILMER CUTLER - JAMES ROBERTSON  
AUGUST 31, 1994PAGE 1  
ACCOUNT 01478465

DESCRIPTION	COST VALUE	MARKET VALUE	ESTIMATED ANNUAL INCOME	YIELD ON MARKET
CASH EQUIVALENTS	1,664.85	1,664.85	71.59	4.30
GOVERNMENT & GOVT AGENCIES	267,036.13	266,018.80	20,475.00	7.70
CORPORATE OBLIGATIONS	223,363.70	233,208.70	19,785.00	8.48
PREFERRED STOCK	25,000.00	25,000.20	0.00	0.00
EQUITY STOCK	283,940.21	320,704.00	11,240.20	3.51
CASH	0.83	0.83	0.03	3.43
TOTAL ASSETS	801,005.72	846,597.38	51,571.82	6.09

STATEMENT OF ASSETS  
WILLIAM COLLIER - JAMES ROBERTSON  
AUGUST 31, 1994

SHARES/ PAR VALUE	DESCRIPTION	COST VALUE	MARKET VALUE	MARKET PRICE	ESTIMATED ANNUAL INCOME	YIELD ON MARKET
CASH EQUIVALENTS						
1,664.850	FEDERAL RESERVE NOTE PRIME MONEY MARKET FID	1,664.85	1,664.85	1.0000	71.59	4.30
TOTAL CASH EQUIVALENTS		1,664.85	1,664.85		71.59	4.30
GOVERNMENT & GOVT AGENCIES						
20,000.000	FEDERAL HOME LN MTG CORP DEB DTD 11/07/1991 7 750 11/07/2001	21,537.50	20,408.00	1.0234	1,550.00	7.57
30,000.000	FEDERAL NATL MTG ASSN DEB DTD 07/10/1991 8 875 07/10/2001	30,487.50	31,228.20	1.0409	2,662.50	8.91
40,000.000	FNMA DTD 12/17/87 9 250 11/10/98	41,950.00	40,362.40	1.0091	3,700.00	9.17
40,000.000	TENNESSEE VALLEY AUTH PAR BD 1989 SER F DTD 11/15/80 8 250 11/15/96	40,450.00	41,750.00	1.0437	3,300.00	7.91
40,000.000	US T NTS DTD 12/31/91 6 125 12/31/1996	39,605.57	39,962.40	0.9991	2,450.00	6.13
20,000.000	UNITED STATES TREAS NTS DTD 05/16/1994 6 500 05/15/1997	20,038.60	20,062.60	1.0031	1,300.00	6.48
40,000.000	UNITED STATES TREAS NOTES DTD 1/17/89 7 875 7/15/96	42,925.26	41,237.60	1.0309	3,150.00	7.64

STATEMENT OF ASSETS  
WILLIAM CUTLER JAMES ROBERTSON  
AUGUST 31, 1994

PAGE 1  
ACCOUNT 014/8405

SHARES/ PAR VALUE	DESCRIPTION	COST VALUE	MARKET VALUE	MARKET PRICE	ESTIMATED ANNUAL INCOME	YIELD MARKET ---
30,000 000	UNITED STATES TREAS NTS DTD 07/31/1991 7 875 07/31/1996	30,041 70	30,946 80	1 0316	2,302 50	7 64
	TOTAL GOVERNMENT & GOV AGENCIES	267,036 13	266,018 80		20,475 00	7 70
	CORPORATE OBLIGATIONS					
40,000 000	BAI TIMORE GAS & LIT CO 151 REF MFG DTD 10/15/89 8 400 10/15/1999	39,269 20	41,170 80	1 0441	3,360 00	8 04
50,000 000	CATERPILAR MFGS ACCEP CORP NOTE DTD 1/1/91 8 750 1/1/95	50,375 00	50,496 50	1 0099	4,375 00	8 66
30,000 000	111 FINL CORP 58 DBB 4/5/89 10 125% 04/05/1999	32,086 20	11,180 00	1 0000	3 037 50	9 16
40,000 000	PENNEY J C INC NT DTD 02/21/1991 9 050 03/01/2001	40,170 80	41,170 00	1 0030	3,620 00	8 36
30,000 000	PRIVATE EXPT FDC CORP SEC'D NT 51R BB DTD 10/31/88 9 100 10/30/1998	31,087 50	32,441 50	1 0812	2,730 00	8 42
60,000 000	SEAFORD LCN + CORP SUB NOTE DTD 2/19/91 8 87% 2/15/01	29,775 00	32,004 00	1 0868	2,662 50	8 32
	TOTAL CORPORATE OBLIGATIONS	223,363 70	233,298 80		19,785 00	8 48
	PREFERRED STOCK					
11,889 000	INDEP FILM CLAS A PTD	25,000 00	25,000 20	1 8000	0 00	0 00

STATEMENT OF ASSETS  
WILMER CUTLER, JAMES ROBERTSON  
AUGUST 31 1994

PAGE 4  
ACCOUNT OVERVIEW

SHARES PAR VALUE	DESCRIPTION	COST VALUE	MARKET VALUE	MARKET PRICE	ESTIMATED ANNUAL INCOME	YIELD ON MARKET
	TOTAL PREFERRED STOCK	25,000.00	25,000.00		0.00	0.00
	EQUITY STOCK					
200,000 A 1 & 1		8,317.31	10,925.00	54.6250	264.00	2.42
400,000 ALEXANDER & BALDWIN INC		9,525.00	10,110.00	25.2750	155.00	1.6
4,000,000 AMERICAN GEN CORP		10,700.00	11,100.00	27.7500	48.00	0.39
150,000 AMERICAN HOME PRODUCTS CORP		9,844.13	8,800.00	58.6667	148.00	1.62
150,000 AMERICAN NATIONAL INS CO COM		7,888.50	7,275.00	51.8333	180.00	1.6
883,000 ARMYER DANIELS MIDLAND CO		17,828.28	22,731.25	25.7500	88.00	0.44
250,000 BELL ATLANTIC CORP		10,862.54	13,087.50	54.7500	600.00	5.61
150,000 BOEING CO		5,945.88	6,865.00	45.7667	150.00	2.63
600,000 CABLE & WIRELESS FIBER LTD CO SPONSORED 40R		8,885.09	12,100.00	21.2500	339.80	4.1
250,000 CARR-SMITH CORP COM		7,236.38	7,262.50	29.0500	61.2500	0.84
200,000 CONSOLIDATED NAT GAS CO		7,868.42	7,975.00	39.8750	398.00	4.87
300,000 GTE CORP		8,724.40	9,325.00	31.0833	364.00	5.92

STATEMENT OF ASSETS  
WILLIAM CUTLER & JAMES ROBERTSON  
AUGUST 31, 1994

PAGE 2  
ACCOUNT 014/8465

SHARES/ PAR VALUE	DESCRIPTION	COST VALUE	MARKET VALUE	MARKET PRICE	ESTIMATED ANNUAL INCOME	YIELD ON MARKET
150 000	HERSHEY FOODS CORP	6,711.49	7,200.00	48.0000	195.00	2.71
100 000	LILLY ELI & CO	5,785.70	5,350.00	57.0000	250.00	1.11
250 000	MELLON BK CORP	11,346.39	11,850.00	59.2500	430.00	1.70
400 000	MERCANTILE BANKSHARES CORP	8,450.00	8,750.00	21.8750	272.00	1.11
150 000	MORGAN J P & CO INC	10,288.74	9,881.25	65.8750	308.00	1.11
400 000	NESTLE SA SPONSORED ADR REPSTG REG SH	11,275.00	18,450.40	46.1260	611.20	1.61
400 000	PACIFICORP	8,791.10	6,800.00	17.0000	112.00	0.65
250 000	PEPSICO INC	7,898.20	8,481.25	33.1250	180.00	1.1
150 000	PRUDEN & GAMBLE CO	8,716.04	9,141.25	60.8750	270.00	2.60
250 000	REPUBLIC N Y CORP	12,609.20	11,312.50	45.2500	160.00	2.96
200 000	ROCHE HDG LTD SPONSORED ADR	5,400.00	9,172.00	45.8630	59.40	0.65
150 000	ROYAL DUTCH PETE CO 5 GLDRS	12,001.54	16,893.75	112.6250	600.90	1.50
2,000 000	SALOMON BROTHERS FUND INC	26,150.00	25,250.00	12.7500	640.00	2.51
300 000	TELEFONICA DE ESPANA S A SPONSORED ADR	9,282.18	12,412.50	41.3750	311.60	2.51
300 000	WASHINGTON GAS LT CO	8,572.31	11,400.00	38.0000	666.00	5.84



STATEMENT OF ASSETS  
WILMER CUTLER & JAMES ROBERTSON  
AUGUST 31, 1994

PAGE 6  
ACCOUNT 01478465

SHARES/ PAR VALUE	DESCRIPTION	COST VALUE	MARKET VALUE	MARKET PRICE	ESTIMATED ANNUAL INCOME	YIELD ON MARKET
300 000 WEI	GARTEN REALTY INV	8,192 07	11,137 50	37 1250	684 00	6 14
500 000 WESTERN INV	REAL ESTATE TR	8,477 59	6,562 50	13 1250	560 00	8 53
	SH BEN INT					
TOTAL EQUITY STOCK		283,940 21	320,704 00		11,240 20	3 51
CASH		0 83	0 83		0 03	3 43
TOTAL ASSETS		801,005 72	846,597 38		51,571 82	6 09

QUESTIONNAIRE FOR JUDICIAL NOMINEES

KATHLEEN McDONALD O'MALLEY

**I. BIOGRAPHICAL INFORMATION (PUBLIC)**1. Full Name

Kathleen McDonald O'Malley  
(Nee Kathleen Patricia McDonald)

2. Address:

Residence: 1911 Edgemont Road  
Upper Arlington, Ohio 43212

Office: Office of the Attorney General  
State Office Tower  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43266-0410

3. a. Date and place of birth:

November 17, 1956; Drexel Hill, Pennsylvania

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).**ANSWER:**

Married to Anthony Joseph O'Malley, Attorney at Law, Partner, Vorys, Sater, Seymour and Pease, 52 East Gay Street, Columbus, Ohio 43216.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

**ANSWER:**

Kenyon College, 1975-79

Gambier, Ohio

A.B. in History with Distinction  
and High Honors

A.B. in Economics with Distinction  
Magna Cum Laude

Case Western Reserve, 1979-82

University School of Law

J.D. 1982

Order of the Coif

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

**ANSWER:**

a. 1979 - Hollingsworth & Hollingsworth  
Superior Building  
Cleveland, Ohio 44115  
(Part-time docket clerk and courtroom runner)

b. 1979 - Systems Sales, Inc.  
Cleveland, Ohio 44143  
(Part-time secretarial and filing assistant)

c. 1980 - Summer  
Kelley, McCann & Livingstone  
200 Public Square, 35th Floor  
Cleveland, Ohio 44114-2302  
(Summer Associate)

d. 1981 - Summer  
Shearman & Sterling  
Citicorp Center  
153 East 53rd Street  
New York, New York 10022  
(Summer Associate)

- e. September 1981 through April 1982  
Case Western Reserve University  
School of Law  
11075 East Boulevard  
Cleveland, Ohio 44106  
(Research Advocacy and Writing Instructor)
- f. June through July 1982  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004-2595  
(Summer Associate)
- g. August 1982 through August 1983  
United States Court of Appeals  
for the Sixth Circuit  
432 United States Post Office and Courthouse  
Cincinnati, Ohio 45202  
(Law Clerk in the Chambers of  
The Honorable Nathaniel R. Jones)
- h. August 1983 through December 1984  
Jones, Day, Reavis & Pogue  
901 Lakeside  
North Point  
Cleveland, Ohio 44114  
(Associate in Litigation Department)
- i. January 1985 through April 1991  
Porter, Wright, Morris & Arthur  
Huntington Building, 17th Floor  
925 Euclid Avenue  
Cleveland, Ohio 44115  
(Associate, Senior Associate and Partner  
in Litigation Department)
- k. April 1991 through 1993  
Office of the Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43266-0410  
(Chief Counsel)
- l. April 1993 through Present  
Office of the Attorney General  
30 East Broad Street, 17th Floor  
Columbus, Ohio 43266-0410  
(First Assistant Attorney General and Chief of Staff)

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

ANSWER: No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

ANSWER:

Phi Beta Kappa

Order of the Coif

Recipient, Edwin G. Halter Memorial Scholarship (1980)

Recipient, International Trial Lawyers Award (1982)

Recipient, Case Western Reserve University School of Law

Distinguished Recent Graduate Award (1992)

Various small Scholarships and Grants Awarded  
during the course of College and Law School

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

ANSWER:

American Bar Association (active member)

Federal Bar Association (former member)

Anthony J. Celebrezze Inn of the American Inns of Court (Active Barrister)

Ohio State Bar Association (active member)

Cleveland Bar Association (former member)

Committees: Member, Federal Bar Association 1992 Convention  
Committee (1990 - 1991)

Member, United States District Court, Northern District of  
Ohio, Committee on Alternative Dispute Resolution (1990 -  
1991)

Ohio Center for Law Related Education -- Case Committee  
(1992-93 and 1993-94)



Delegate, ABA Task Force on Funding of the Civil Justice System (Summer, 1993)

Member, ABA Special Committee on Youth Education for Citizenship (1993 - Present)

Member, Columbus Bar Association Civil Justice Reform Task Force (Jan. 1994 - Present)

Member, Ohio Legal Assistance Implementation Committee (1992-93)

Board Member, Ohio Legal Assistance Foundation (January, 1994 - Present)

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

**ANSWER:**

Lobbying: None

Other: Capital Club, Columbus, Ohio (Athletic and Dinner Club)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

**ANSWER:**

Admitted to Practice in the  
State of New York - Passed bar in 1982. Because I had to travel to Albany, New York, to be sworn in, I was unable to be sworn in officially until July 1983, when my clerkship was completed.  
(Non-resident, inactive status)

Admitted to Practice in the  
State of Ohio - May 1983

U.S. Court of Appeals for the Sixth Circuit - 1983

U.S. District Court for the Southern District  
of Ohio - 1983

U.S. Court of Appeals for the Eleventh Circuit - 1984

U.S. District Court for the Northern District  
of Ohio - 1985

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

**ANSWER:**

Publications Edited - None other than as a member of the Case Western Reserve Law Review.

Legal Policy Speeches - In my capacity as First Assistant Attorney General I often do public speaking as a surrogate for the Attorney General. These speeches generally relate to the operations and initiatives of the office and/or to the status of legal matters of interest to the office. None of these speeches has addressed or expressed legal policy views that are personal to me, as opposed to the Office of the Attorney General.

13. Health: What is the present state of your health? List the date of your last physical examination.

**ANSWER:**

Present state of health - Excellent

Date of last exam - July 11, 1994

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

**ANSWER:**

None.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for your significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the

opinions listed were not officially reported, please provide a copy of the opinions.

**ANSWER:**

N/A

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

**ANSWER:**

I have held no elective public offices. The positions of Chief Counsel and First Assistant Attorney General in the Office of the Ohio Attorney General are statutorily-designated positions, appointed by the Attorney General of Ohio.

17. Legal Career:

- a. Describe chronologically your legal career after graduation from law school including:
1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

**ANSWER:** August 1982 - August 1983: Law Clerk to The Honorable Nathaniel R. Jones, United States Court of Appeals for the Sixth Circuit, 432 United States Post Office and Courthouse, Cincinnati, Ohio 45202

2. whether you practiced alone, and if so, the addresses and dates:

**ANSWER:** No.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

**ANSWER:**

August 1983 - December 1984: Associate,  
Jones, Day, Reavis & Pogue  
901 Lakeside

North Point  
Cleveland, Ohio 44114

January 1985 - April 1991:

Associate, Senior Associate, Partner,  
Porter, Wright, Morris & Arthur  
Huntington Building  
17th Floor  
925 Euclid Avenue  
Cleveland, Ohio 44115

Associate (1985 - 1987);  
Senior Associate (1988 - 1990);  
Partner (1991)

April 1991 - April 1993:

Chief Counsel,  
Ohio Attorney General's Office  
30 East Broad Street  
17th Floor  
Columbus, Ohio 43266-0410

April 1993 - Present

Chief of Staff and First Assistant Attorney  
General,  
Ohio Attorney General's Office  
30 East Broad Street  
17th Floor  
Columbus, Ohio 43266-0410

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?
2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

**ANSWER:**

1982 - 1983

Judicial Law Clerk - addressed, researched and drafted opinions regarding constitutional, jurisdictional and evidentiary issues as they related to litigation pending before the United States Court of Appeals for the Sixth Circuit.

1983 - 1984

Complex corporate litigation, usually on behalf of large corporations, including many Fortune 500 companies. The bulk of my practice during those years involved intellectual property litigation. I was also involved in a number of antitrust, products liability and labor law matters. I primarily engaged in extensive motion practice, research, brief writing and deposition discovery.

1985 - May 1988

During this period, I was one of the lawyers representing the Columbus City Schools in their successful effort to obtain release from the desegregation decree imposed by Judge Robert M. Duncan. I also represented small business clients with respect to various types of shareholder and contract disputes.

The bulk of my practice, however, related to my role as one of the special counsel assigned to represent the State of Ohio in connection with the collapse of ESM Securities and the closing of Home State Savings Bank. During this time, I, along with numerous lawyers from Porter, Wright, Morris & Arthur, worked on behalf of the State of Ohio to recover the money the State paid to savings and loan depositors after the Home State collapse, and prosecuted legal proceedings designed to restore the integrity of the savings and loan system in the state. Among other activities, I participated in the drafting and filing of a writ of prohibition, which the State of Ohio brought as a direct action before the Ohio Supreme Court (*Celebrezze v. Smith*, 17 Ohio St. 3d 163 (1985)); with co-counsel, I drafted and filed an action against the Ohio Deposit Guaranty Fund that resulted in its payment of \$81 million to the State of Ohio; I drafted and filed actions against the principals of ESM Securities; I participated in document review and extensive deposition discovery of accountants, lawyers, brokers and savings and loan principals and employees (in many of these instances in a first chair capacity); I participated in the selection of and worked with experts in the banking field, especially in the area of reverse repurchase transactions; I, working with one other co-counsel, engaged in discovery to trace the assets of Marvin Warner; and I participated, as one of the counsel of record, in a six-week trial against Arthur Andersen & Co., which ultimately resulted in a settlement of the claims against that entity and a significant payment of money to the State of Ohio.



May 1988 through March 1990

As most of the Home State matters concluded, I resumed my representation of small and mid-size businesses, partnerships and entrepreneurs. I represented a number of individuals involved in shareholder disputes with former partners and successor corporations, and began to develop expertise in matters involving trade secrets, restrictive covenants and covenants not to compete. During this period, my practice focused on efforts to obtain or to resist temporary restraining orders and/or preliminary injunctions in cases involving trademarks, trade secrets, claims of unfair competition and alleged violations of employment contracts. I represented plaintiffs and defendants whose positions embraced both sides of these types of disputes.

At the same time, I represented clients in a number of product liability matters, including one which resulted in an Ohio court of appeals decision in favor of my client. In another product liability action, I and another Porter, Wright attorney tried the matter to verdict in favor of our client, a product manufacturer.

Finally, in addition to a variety of small matters, I also participated in several matters focusing on constitutional issues. For example, I represented a newspaper in a defamation claim against it, issued an opinion to a private club concluding that a city ordinance requiring the club to diversify its membership was constitutional and that the club was required to abide by that statute, and participated as second chair in a matter addressing the interaction between state and federal regulatory authority over railroads.

1990 through March 1991

While my representation of small businesses continued during this period, I spent large quantities of my time engaging in discovery and motion practice in connection with a large securities fraud dispute, which I and others at my law firm filed in Federal District Court in Cleveland. The court placed the case on a fast track, requiring daily depositions from March 1990 through August 1990, while the parties simultaneously briefed jurisdictional, evidentiary and discovery issues to the court. I had primary responsibility for approximately one-half of the deposition discovery and authored or supervised the drafting of the briefs on the substantive legal issues.

While this matter took up the majority of my time in 1990, I also, on behalf of plaintiffs, tried a case under 42 U.S.C. § 1983. I functioned as first chair, and tried the case to verdict in Federal

District Court in Cleveland. In this period, I also defended a number of sole proprietors and businesses against requests for temporary restraining orders in connection with contract disputes. Finally, during the end of this period, I served as co-counsel with Richard Markus in the election contest filed in connection with the 1990 election of Lee Fisher to Attorney General for the State of Ohio.

#### April 1991 through April 1993

For the first two years of my tenure at the Ohio Attorney General's Office, I engaged in a public law practice involving the defense of Ohio state agencies and public officials, and the analysis and defense of state legislation. Cases personally litigated by me and amicus briefs personally drafted by me (as opposed to those cases supervised by me in my capacity as Chief Counsel) all centered on federal and state constitutional questions. These matters were litigated in state and federal court at the trial and appellate court levels and as direct actions before the Ohio Supreme Court. In my role as supervisor of all matters litigated in the Ohio Attorney General's Office, my practice included all issues addressed by that office, including questions relating to sovereign immunity, reapportionment, election law, environmental law, administrative law, criminal law, eminent domain, the state's constitutional spending and taxing authority, and state court jurisdictional issues, among others.

#### April 1993 to Present

Upon formally assuming the role of Chief of Staff and First Assistant Attorney General, my supervisory functions increased dramatically and my personal handling of legal matters decreased almost as dramatically. I am responsible for the oversight of all aspects of the office, including the legal, law enforcement, legislative, communications and collections operations and the human resources and administrative aspects of the office, which employs in excess of 1,100 persons.

While I still supervise and ultimately authorize all legal initiatives of the office, I have spent a significant amount of time in the last year and one-half spearheading law enforcement-related initiatives and have concentrated on improving the management and professionalism of the office.

- c. 1. Did you appear in court frequently, occasionally, or not at all?

**ANSWER:**

Occasionally.

2. What percentage of these appearances was in:

- (a) federal courts;
- (b) state courts of record;
- (c) other courts.

**ANSWER:**

While my early practice entailed virtually all appearances in federal court, by virtue of my position, the bulk of my recent practice has been in state courts. Accordingly, I would estimate that approximately 65% of my courtroom appearances have been in state court and 35% in federal court.

3. What percent of your litigation was:

- (a) civil;
- (b) criminal.

**ANSWER:**

The only criminal litigation I was engaged in prior to joining the Attorney General's Office related to pro bono matters I handled by assignment from the federal courts. Accordingly, I would estimate that the percentage of criminal litigation I engaged in while in private practice was minimal (though including one oral argument before the United States Court of Appeals for the Sixth Circuit). Having said that, however, my positions at the Attorney General's Office have required me to be involved in the assessment of criminal matters and to supervise criminal prosecutions on a regular basis. I have also supervised the Office's handling of habeas corpus matters and of death penalty appeals. I have also been actively involved in the efforts of the National Association of Attorneys General to reach a consistent position on federal habeas corpus reform, the Racial Justice Act and other aspects of the federal Crime Bill. Finally, I am ultimately responsible for overseeing the Office's criminal investigations and crime-related legislative initiatives.

4. State the approximate number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether

you were sole counsel, chief counsel, or associate counsel.

**ANSWER:**

With respect to the number of cases tried to verdict or judgment, if one includes those cases which, following hearings on requests for temporary restraining orders or preliminary injunctions, resulted in judgments with respect to those requests for preliminary relief (the majority of which were either settled or appealed after that stage of the proceedings), I estimate that I participated as sole counsel, chief counsel or associate counsel in approximately 15-20 cases tried to verdict or judgment. In approximately six to eight of those cases I functioned as sole or lead counsel, and in the others I participated either as co-counsel or associate counsel.

5. What percentage of these trials was:  
 (a) jury;  
 (b) non-jury.

**ANSWER:**

Approximately 85% of the cases I have handled have been non-jury trials.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe briefly the nature of your participation in the litigation and the final disposition of the case.

**ANSWER:**

The ten most significant litigated matters (not necessarily in order of substantive importance):

1. In re Election of November 6, 1990 for the Office of Attorney General of Ohio, Case No. 90-2544, 62 Ohio St. 3d 1 (1991) (Before the Ohio Supreme Court)

Paul E. Pfeiffer, Attorney General Lee Fisher's opponent in the 1990 election for the office of the Attorney General in the State of Ohio, challenged the election of Attorney General Fisher, claiming that alleged irregularities existed in the election process, which rendered the election defective. Contestor's central allegations were of alleged improprieties in ballot rotation and of the impact of invalid ballot rotation on voter choices. He also charged that irregularities and fraud tainted

the counting and recording of ballots in Mahoning County.

Because election contests in Ohio may only be instituted as direct actions before the Supreme Court, the matter was litigated in a unique fashion. The parties submitted all factual evidence to the court through trial depositions, affidavits, exhibits and/or stipulations of fact. The depositions of over forty witnesses were taken and submitted to the court and those depositions generated more than 150 exhibits for the court's consideration. A lengthy brief synthesized and summarized this evidence for the court, and delineated how those facts, as applied to controlling law, supported Lee Fisher's election. The election contest commenced during the last week of December 1990 and the Supreme Court heard oral argument on all of the parties' submissions on February 20, 1990. This compressed schedule necessitated expedited and sometimes around-the-clock trial preparation.

In this matter, I sat second chair to Richard M. Markus. Together, we represented Attorney General Lee Fisher. Richard Markus and Steven Kaufman conducted the extensive deposition and document discovery. I conducted all of the research and drafted the briefs. I also assembled the factual record for submission to the court, and played a significant role in devising and implementing litigation strategy decisions. I participated in outlining and preparing the argument to the Ohio Supreme Court, which Richard Markus made. The Court ruled in favor of Attorney General Fisher, rejecting all of contestor's claims.

Co-counsel: Richard Markus, Porter, Wright, Morris & Arthur, Huntington Building, 17th Floor, 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-9000; Steven Kaufman, Kaufman & Cumberland Co., L.P.A., 1404 East 9th Street, Cleveland, Ohio 44114, 216-861-1300; Opposing counsel: William C. Wilkinson, Thompson, Hine & Flory, 10 West Broad Street, Columbus, Ohio 43215. 614-469-7200.

2. Gordon Square Restaurant & Lounge, Inc. v. Sergeant Roger Dennerll, et al., Case No. C86-1883, N.D. Ohio, August, 1990 (Judge Alvin I. Krenzler)

I represented plaintiffs in their action brought against two police officers and the City of Cleveland, under 42 U.S.C. § 1983. A jury heard the evidence for approximately ten days in The Honorable Alvin I. Krenzler's courtroom.

The trial involved allegations that two City of Cleveland vice officers who had arrested the two plaintiffs for prostitution and testified against them in a criminal trial on those charges, had arrested plaintiffs without probable cause to do so, had engaged in excessive use of force, had failed to provide sufficient medical attention to the plaintiffs when needed and had intentionally inflicted emotional distress upon the plaintiffs by perjuring themselves in the course of the plaintiffs' criminal trial. The federal jury in the § 1983 action returned a verdict on all counts against the two police officers, crediting the plaintiffs' claims and finding



the defendants liable under all theories of liability.

After the jury returned its verdict, the court was prepared to begin phase two of the trial (which had been trifurcated into individual police officer liability, city liability and damage phases). Plaintiffs were prepared to prove that the City of Cleveland was liable for the acts of its officers because it had failed properly to train or to monitor its officers with respect to the proper use of force. At that point, the City offered to settle the case, conceding its obligation to pay damages to the plaintiffs in connection with any judgment rendered against the individual officers. The case settled on terms favorable to the plaintiffs.

On behalf of plaintiffs, I served as the lead lawyer in the case. I cross-examined both police officers, examined most of plaintiffs' witnesses on direct examination, made the legal arguments to the court with respect to defendants' claims of qualified immunity and with respect to disputed evidentiary matters. I also made the closing arguments to the jury. An associate from my former law firm assisted. Significantly, Porter, Wright, Morris & Arthur allowed the associate and me to litigate this matter on a pro bono basis.

Co-counsel: Robert Mann, Progressive Insurance Company, PLG Group, 3401 Enterprise Parkway, Beachwood, Ohio 44122, 216-766-5081; Opposing counsel: Kathleen Martin, City of Cleveland Law Department, Justice Center, 1200 Ontario Street, Cleveland, Ohio 44113, 216-664-2800.

3. Newman v. Voinovich, Case No. C2-92-248, S.D. Ohio (Judge George Smith); Appeal Case No. CA 92-3345, United States Court of Appeals for the Sixth Circuit

As primary counsel, I represented Governor George V. Voinovich in connection with plaintiff's challenge to the constitutionality of Governor Voinovich's system for appointing persons to fill in-term judicial vacancies in the State of Ohio. The plaintiff claimed that the United States Supreme Court trilogy of cases addressing the propriety of patronage hiring and discharges (Elrod, Branti, and Rutan) mandated the conclusion that the Governor's appointment practices violated the plaintiff's and other would-be candidates' First Amendment rights of expression and association. Plaintiff also asserted that Governor Voinovich's appointment practices, which resulted in the appointment of virtually all Republicans and very few minorities, violated the Voting Rights Act.

The court ordered expedited discovery, followed by a hearing on March 26, 1992 on plaintiff's request for a preliminary injunction. The plaintiff sought to prohibit the Governor from making further judicial appointments in the State of Ohio unless and until the Governor instituted a bipartisan screening process for purposes of choosing judicial candidates.

Following the hearing, which included the testimony of numerous fact and expert witnesses, the court entered judgment on March 31, 1992 in favor of

Governor Voinovich and dismissed plaintiff's complaint on the merits sua sponte. Plaintiff appealed to the Sixth Circuit. On September 9, 1992 I argued the appeal in the Sixth Circuit, again representing Governor Voinovich as the appellee. The Sixth Circuit ruled in the Governor's favor and the United States Supreme Court denied certiorari.

Co-counsel: Patrick Devine, Schottenstein, Zox & Dunn, 41 South High Street, 26th Floor, Columbus, Ohio 43215, 614-221-3211; Opposing counsel: Bruce I. Petrie, Sr., Graydon, Head & Ritchey, 1900 Fifth Third Center, 511 Walnut Street, Cincinnati, Ohio 45202-3157, 513-621-6464.

4. Preterm Cleveland v. Voinovich, Case No. 92CV-01-528, Franklin Cty. - Common Pleas (Judge Guy Reese); Ohio Tenth District Court of Appeals Case No. 92-AP 791

In this matter, I represented defendants Governor George V. Voinovich, the Ohio Department of Health and Attorney General Lee Fisher. Plaintiffs challenged the constitutionality of House Bill 108, the Ohio law requiring physician-driven informed consent and a 24-hour waiting period prior to the performance of an abortion in the State of Ohio. In March 1992, the trial court conducted a hearing on plaintiff's request for a preliminary injunction, and received evidence regarding plaintiff's claim that House Bill 108 violated the plaintiffs' privacy and First Amendment rights under the federal constitution. The court consolidated plaintiffs' federal claims with the trial on the merits of plaintiff's state law claims. The trial on the merits commenced on May 21, 1992. Following a full trial on the merits and extensive arguments by counsel of record, on May 27, 1992 the trial court declared House Bill 108 unconstitutional under both the United States and Ohio Constitutions. I functioned as the lead trial counsel throughout the trial, making all legal arguments and examining and cross-examining the majority of the witnesses.

The state appealed the matter to the Tenth District Court of Appeals and I argued on behalf of the State on October 27, 1992. The Tenth District reversed the trial court and ruled in the State's favor. The Ohio Supreme Court thereafter refused to hear the matter.

Co-counsel: Andrew Sutter, Office of the Ohio Attorney General, State Office Tower, 30 East Broad Street, 17th Floor, Columbus, Ohio 43266-0410, 614-466-3376; Andrew Bergman, Office of the Ohio Attorney General, State Office Tower, 30 East Broad Street, 17th Floor, Columbus, Ohio 43266-0410, 614-466-3376; Opposing counsel: Kevin O'Neill, American Civil Liberties Union Foundation, 1223 West Sixth Street, Cleveland, Ohio 44113-1353, 216-781-8639.

5. State ex rel. Cincinnati Post v. The Second and Sixth District Courts of Appeals, Case No. 91-2552, decided December 14, 1992, 65 Ohio St. 3d 378 (Before the Ohio Supreme Court)

This was a direct action in the Ohio Supreme Court seeking a writ of mandamus against the Second and Sixth District Courts of Appeals. The Cincinnati Post sought the production of records relating to the Courts' consideration of minors' requests to bypass the statutory obligation to inform their parents or guardians prior to obtaining an abortion in the State of Ohio. I was lead counsel representing the Courts of Appeals. I argued to the Supreme Court that the importance of protecting the anonymity of minors involved in judicial bypass proceedings outweighed petitioner's claimed right to the documents.

The Ohio Supreme Court ruled in favor of the petitioner, concluding that the State's interest in protecting the anonymity of the minor was not sufficient to override the First Amendment interest in free access to the courts. The Supreme Court further found that the State should attempt to protect the anonymity of the minor through more narrowly drawn means.

Co-counsel: Andrew Sutter, Office of the Ohio Attorney General, State Office Tower, 30 East Broad Street, 17th Floor, Columbus, Ohio 43266-0410, 614-466-3376; Opposing counsel: David Marburger, Baker & Hostetler, Suite 3200, 1900 East 9th Street, Cleveland, Ohio 44114-3485, 216-621-0200.

6. Diamond Co. v. Gentry Acquisition Corp., Case No. 137875, Cuyahoga Cty. Common Pleas, 48 Ohio Misc. 2d 1, 531 N.E.2d 777 (1988) (Judge James J. McMonagle)

In this case I was the lead lawyer defending Gentry Clothiers. Diamonds Men's Stores claimed that Gentry engaged in false advertising by asserting that it sold top quality clothing at "about half" the price of regular-priced men's retailers. The court conducted a several day trial on plaintiff's request for a preliminary injunction. On Gentry's behalf, I examined numerous witnesses, including experts in men's clothing from around the world, to establish that, in fact, Gentry's claims were accurate.

After the preliminary injunction hearing, the court found that the plaintiff: (1) was not entitled to a preliminary injunction; and (2) had very little likelihood of ever succeeding on the merits of its underlying claims against Gentry. Judge James J. McMonagle issued a written opinion delineating his findings.

Sometime following the court's ruling on the preliminary injunction, the parties settled their dispute.

Co-counsel: Hugh McKay, Porter, Wright, Morris & Arthur, Huntington Building, 17th Floor, 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-9019; Opposing counsel: Jeffrey Friedman, Friedman, Damiano & Smith, 600 Standard Bldg.,

Cleveland, Ohio 44113-1101, 216-621-0070.

7. Pumper v. Kawasaki, Case No. 75730, Cuyahoga Cty. Common Pleas (Judge George McMonagle)

In this products liability case, I sat second chair to a more senior Porter, Wright partner, Terrance M. Miller, in the defense of a manufacturer. In that role, I made most of the legal arguments to the court and examined and cross-examined approximately 50% of the witnesses appearing on the witness stand during the trial. I also actively participated in the voir dire of the jury. Mr. Miller made opening and closing arguments to the jury. All briefs, motions and jury instructions were drafted by me.

Plaintiff claimed that a three-wheeled all-terrain vehicle produced by Kawasaki was defectively and/or negligently designed, was negligently manufactured, and further alleged that Kawasaki had failed properly to warn plaintiff regarding the use of the vehicle. On April 27, 1988, following approximately eight days of trial, the jury returned a verdict in favor of the defendant Kawasaki.

Co-counsel: Terrance Miller, Porter, Wright, Morris & Arthur, 41 South High Street, 29th Floor, Columbus, Ohio 43215-3406, 614-227-2000; Opposing counsel: Andrew Krembs, Nuremberg, Plevin, Heller & McCarthy, 1st Floor, 1370 Ontario Street, Cleveland, Ohio 44113-1792, 216-621-2300.

8. Arthur Andersen & Co. v. State of Ohio, et al., Case No. 86-07246PR Ohio Ct. of Claims, 1988 (Judge John J. Donnelly, Visiting Judge)

This action against Arthur Andersen & Co. was one of the most substantial aspects of the Home State litigation in which Porter, Wright, Morris & Arthur acted as special counsel to the Superintendent of Savings & Loans and the State of Ohio. The State of Ohio alleged, in the name of the Superintendent of Banks and on behalf of the depositors and creditors of Home State Savings Bank, that Arthur Andersen & Co. negligently discharged its professional functions as the auditors of Home State Savings Bank, thus contributing to its collapse. Specifically, the State alleged that Arthur Andersen failed to address the dangers inherent in the extensive reverse repurchase transactions Home State had engaged in with ESM Securities, and had given Home State the equivalent of an auditing clean bill of health, despite its precarious financial position and its failure to maintain a sufficient net worth to cover its potential losses.

The matter went to trial in the Ohio Court of Claims before a visiting judge brought in solely for purposes of trying that case. Since the matter presented some questions triable to a jury and some which were not, the court empaneled a jury and a jury trial began in February 1988. Following six full weeks of trial, the plaintiff completed the submission of its case in chief to the jury. Before the defendant began its case, the parties settled, and the trial ended without

deliberation by the jury. Arthur Andersen's insurers settled the case by paying a significant sum of money to the State of Ohio.

I was one of several lawyers who participated in the trial in the Court of Claims. Substantively, my involvement included briefing and research with respect to critical evidentiary and jurisdictional issues, the examination of some fact witnesses, the drafting of jury instructions and drafting of the trial brief.

Co-counsel: Charles J. Kurtz, Robert W. Trafford, Daniel W. Costello, Hugh E. McKay, Porter, Wright, Morris & Arthur, 41 South High Street, 29th Floor, Columbus, Ohio 43215-3406, 614-227-2000; Opposing counsel: James Adams, David Horn, Elizabeth Meyers, Frost & Jacobs, Suite 2500, 201 East 5th Street, Cincinnati, Ohio, 45202-4182, 513-651-6800.

9. Celebrezze v. Dayton Daily News, Case No. 88-127, Cuyahoga Cty. Common Pleas; on appeal, 41 Ohio App. 3d 343 (Judge Terrence O'Donnell)(1987-88)

In this matter, I was one of three counsel of record representing the Dayton Daily News in a defamation action filed by former Ohio Supreme Court Justice James J. Celebrezze against the newspaper and its editorial cartoonist. On the opening day of trial, the court entered judgment in favor of the newspaper and the cartoonist. The plaintiff appealed the matter to the Eighth District Court of Appeals in Cuyahoga County and, again, the newspaper prevailed. In my capacity as one of the lawyers on this case, I had an opportunity to analyze extensively constitutional issues as they relate to the First Amendment of the United States Constitution and the Free Speech Provisions of the Ohio Constitution. This case represented the first case in the State of Ohio in which a court declared that an editorial cartoon, as a matter of law, constitutes an expression of opinion protected by the First Amendment and the Ohio Constitution.

Co-counsel: James Pohlman, Porter, Wright, Morris & Arthur, 41 South High Street, 29th Floor, Columbus, Ohio 43215-3406, 614-227-2000; Opposing counsel, Don C. Iler, Don C. Iler Co., L.P.A., 1370 Ontario Street, Cleveland, Ohio 44113, 216-696-5700.

10. The Ivy Medical Group, Inc. v. Gregory J. Hummer, M.D., et al., Case No. 141572, Cuyahoga Cty. Common Pleas (Judge James J. McMonagle)(1988-89)

In this matter, I served as lead counsel to two brothers who were also entrepreneurs. They pioneered the provision of emergency care services through urgent care centers in the State of Ohio. Their effort was initially successful and highly profitable. They made the mistake, however, of selling shares to a large out-of-state interest who, in partnership with a number of other



investors, managed to gain majority control of the shares in the corporation. I successfully defended against a claim brought by the corporation in which the corporation sought a temporary restraining order and preliminary and permanent injunctions against Dr. Greg Hummer, one of the brothers and head of the medical staff for the urgent care centers. The plaintiffs sought to restrain Dr. Hummer from communicating with the physicians on staff or engaging in practices which the majority of the shareholders claimed were inconsistent with the best interests of the corporation. After receiving a judgment from the court in which Judge James J. McMonagle refused to enter any injunctive relief against Dr. Hummer, I instituted an action on behalf of Dr. Hummer and his brother in which we asserted that the majority shareholders of the corporation had engaged in an effort to "squeeze out" Dr. Hummer and his brother, and had violated the securities laws and the corporation's own shareholder agreements. After extensive discovery and on the eve of the scheduled hearing on the Hummers' request for the appointment of a receiver and the dissolution of the corporation, the matter settled, resulting in a buy out of the Hummer shares.

Co-counsel: William R. Weir, Porter, Wright, Morris & Arthur, Huntington Building, 17th Floor, 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-9000; Opposing counsel: Ira Kaplan and David Schaeffer, Benesch, Friedlander, Coplan & Aronoff, Suite 1100, 850 Euclid Avenue, Cleveland, Ohio 44114, 216-363-4500.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege had been waived).

1. The Home State Matter and Related Litigation

A large portion of my development as a litigator is attributable to my involvement in the Home State litigation. In addition to the Arthur Andersen trial referenced above, several aspects of this matter were ultimately "litigated." Some of those include: (a) a writ of prohibition in the Ohio Supreme Court; (b) a several-day preliminary injunction hearing in federal district court in Pennsylvania in which I was the lead counsel representing the Superintendent of Savings and Loans in connection with the efforts of certain defendants to enjoin the Superintendents' liquidation of Valleywood Savings and Loan; and (c) a dispute over the jurisdictional boundaries of the Court of Claims and the Court of Common Pleas with respect to matters relating to savings and loan liquidations where I personally argued to the Court of Claims and obtained a dismissal on behalf of the Superintendent in her personal capacity. The importance of the Home State experience to my legal development lies more directly, however, in the variety and scope of the matters in which I became involved, and my exposure to some of the most experienced litigators in the country. Throughout Home State I

participated in extensive discovery, engaged in varied and constant motion practice before many different courts in different states, and worked with experts in the financial and accounting fields on a regular basis. While, as is true of litigation of this kind, the bulk of the matters pursued on behalf of the State of Ohio ultimately settled and did not go to trial, the experience reflected that which most civil litigators experience regularly when litigating matters in federal court.

2. Thrifty Rent-A-Car, Inc. v. Sanford Miller, et al.,  
Case No. 1:90 CV 0497, N.D. Ohio (Judge John M. Manos)

I spent a significant portion of 1990 litigating this action with other lawyers from Porter, Wright, Morris & Arthur. Thrifty alleged that Snappy Car Rental and its principals had breached the terms of a purchase contract between the entities, violated state and federal securities laws by failing to disclose numerous material facts regarding the business being sold and violated the Racketeer Influenced and Corrupt Organizations Act (RICO) by operating a corrupt enterprise. Although other attorneys handled many aspects of this case, I served as one of the two lead lawyers on the case, and conducted much of the discovery and motion practice personally.

Perhaps the most significant aspect of the case was the preliminary relief obtained from John M. Manos, District Judge in the Northern District of Ohio. Based on briefing and argument, Judge Manos entered an order freezing all of the defendant's assets and enjoining any transfer of them. The court based its order on our claims of fraud and RICO violations and on evidence indicating that the defendant's assets might be dissipated. Significantly, Judge Manos accepted our argument that, because the state prejudgment attachment statute failed to provide appropriate and timely relief to the plaintiffs, the federal court properly should enter an injunction preventing transfer or dissipation of the defendant's assets.

Co-counsel: Hugh McKay, Porter, Wright, Morris & Arthur, Huntington Building, 17th Floor, 925 Euclid Avenue, Cleveland, Ohio 44115, 216-443-9000; Opposing counsel: Hugh Stanley, Arter & Hadden, 1100 Huntington Bldg., 925 Euclid Avenue, Cleveland, Ohio 44114-1475, 216-696-1100; Gerald Messerman, Duvin, Cahn, Barnard & Messerman, Erieview Tower, 20th Floor, 1301 East 9th Street, Cleveland, Ohio 44114, 216-696-7600.

3. Reapportionment

In my role as Chief Counsel, I was directly involved in the legal matters relating to reapportionment and congressional redistricting in the State of Ohio in 1991-92. Special counsel represented the majority and minority members of the Reapportionment Board. Both groups of special counsel reported to me as they conducted the litigation in which the validity of the plan was challenged. In addition, I personally represented the interests of the State of Ohio in the reapportionment litigation filed in the Federal District Court for the Southern

District of Ohio and the Ohio Supreme Court, and argued on behalf of the of the State of Ohio in the Sixth Circuit Court of Appeals. My role gave me a unique overview of the entire reapportionment process and helped me to develop an understanding of the requirements of the Ohio Constitution, the United States Constitution and the Voting Rights Act as they relate to reapportionment and redistricting. While these issues only arise once a decade, their impact is extensive and the legal precedents set during the course of litigation relating to these matters have far reaching effects.

4. CSX Transportation, Inc. et al. v. The Public Utilities Commission of Ohio, Case No. C-2-88-1023, S.D. Ohio (Judge James Graham); Case No. 88-4184; United States Court of Appeals for the Sixth Circuit, Case No. 90-95, United States Supreme Court

In this case, a number of railroads challenged an Ohio statute and related regulations governing the transportation of hazardous waste on rail lines through the State of Ohio. The plaintiffs, represented by my firm, claimed that pertinent provisions of the Federal Railroad Safety Act preempted the state law and regulations. Plaintiffs filed an action in Federal District Court for the Southern District of Ohio seeking to enjoin the state law. The matter was submitted on briefs by agreement of the parties and on December 12, 1988, the court declared the state law invalid. The State appealed the matter to the Sixth Circuit, which upheld the federal district court's decision. The State sought to have the United States Supreme Court hear the case and, on January 22, 1991 the Supreme Court denied certiorari.

While I was not the most senior lawyer on this matter, sitting second chair to Robert W. Trafford of Porter, Wright, Morris & Arthur, I did a significant amount of the briefing at the federal district court level, drafted the Sixth Circuit brief and drafted the opposition to the petition for certiorari on behalf of the plaintiffs. Participation in this matter had me involved at every federal court level and required extensive analysis of preemption and jurisdictional issues.

Co-counsel: Samuel Porter, Robert Trafford, Porter, Wright, Morris & Arthur, 41 South High Street, 29th Floor, Columbus, Ohio 43215-3406, 614-227-2000; Opposing counsel: James Gainer, Office of the Ohio Attorney General, 7th Floor, 180 East Broad Street, Columbus, Ohio 43266, 614-466-3376.

5. Ethnic Intimidation (Ohio and United States Supreme Courts)(1993-94)

In my role as Chief Counsel, I supervised and participated in most of the strategy and the policy decisions involved in Attorney General Fisher's personal appearance in the Ohio Supreme Court in defense of Ohio's Ethnic Intimidation/Penalty Enhancement Law. I also participated in and supervised the petition for certiorari filed in the U.S. Supreme Court in connection with that case and helped to draft the amicus brief filed on behalf of all states in support of the State of Wisconsin's successful effort to have its ethnic intimidation statute declared constitutional.

II. **FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)**

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

**ANSWER:**

Other than the money to be received upon termination of my state employment by virtue of my membership in the Public Employees Retirement System, I have no such anticipated sources of income.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

**ANSWER:**

The only potential conflicts of interest I foresee during my initial service in the position to which I seek nomination would be presented in cases (1) in which the State of Ohio (and its officials or agencies) is a party and the matters had been referred to the office of the Attorney General during my tenure, (2) in which my husband's firm, Vorys, Sater, Seymour and Pease, appears as counsel of record, and (3) in which the matter had been previously handled by me or one of my colleagues at Porter, Wright, Morris and Arthur during my association with that firm. In each of these categories of cases, I would identify the conflict to the parties. In category (1), I would recuse myself unless the conflict is waived. In categories (2) and (3), I would recuse myself in all such cases.

I would deal with other potential conflicts by referring to the judicial recusal statute, 28 U.S.C. § 455, the Code of Judicial Conduct and the disciplinary and ethical rules governing the practice of law in general. I would then seek the counsel of my colleagues on the bench. I would avoid even the potential appearance of impropriety by disclosing all potential conflicts and then resolving the question of whether recusal is appropriate on a case-by-case basis.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

**ANSWER:**

While I have no plans to pursue outside employment for compensation, I would like to continue my involvement with the National Institute of Trial Advocacy and to continue working with various bar associations and other groups to help instruct other lawyers in the art of trial advocacy, brief writing and evidence. I try to participate in programs like this when asked and I have always done so on a gratis basis.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

**ANSWER:**

See Form A010.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

**ANSWER:**

Attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

**ANSWER:**

I have never held a position on a political campaign committee. Other than volunteering on a very limited basis (literature-drops, etc.) in a few small-scale campaigns, I have also never played an active role in a political campaign.

In my present capacity, I am very informed of and, on my own time, have engaged in discussions regarding Attorney General Lee Fisher's reelection campaign. I have also acted as the Attorney General's surrogate at times on a volunteer basis. I am not a campaign employee or staffer and leave the conduct of the campaign in the hands of the Friends of Fisher Campaign staff. My job is to concentrate on the proper running of the Attorney General's office while others worry about the proper running of the campaign.



## FINANCIAL STATEMENT.

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS		LIABILITIES	
Cash on hand and in banks	7,000	Notes payable to banks—secured	0
U.S. Government securities—add schedule	0	Notes payable to banks—unsecured	11,000
Listed securities—add schedule	0	Notes payable to relatives	0
Unlisted securities—add schedule	0	Notes payable to others	0
Accounts and notes receivable:	0	Accounts and bills due	28,000
Due from relatives and friends	0	Unpaid income tax	0
Due from others	0	Other unpaid tax and interest	0
Doubtful	0	Real estate mortgages payable—add schedule	221,000
Real estate owned—add schedule	240,000	Chattel mortgages and other liens payable	0
Real estate mortgages receivable	0	Other debts—itemize:	
Automobile and other personal property	65,000	Student Loan - spouse	3,000
Cash value—life insurance	1,000		
Other assets—itemize:			
Retirement funds	25,000		
Vorvys, Sater, Seymour and Pease ret. fund	6,000	Total Liabilities	263,000
		Net Worth	81,000
Total Assets	344,000	Total Liabilities and net worth	344,000
CONTINGENT LIABILITIES		GENERAL INFORMATION	
As endorser, cosigner or guarantor	0	Are any assets pledged? (Add schedule.)	No
On leases or contracts	0	Are you defendant in any suits or legal actions?	No
Legal Claims	0	Have you ever taken bankruptcy?	No
Provision for Federal Income Tax	0		
Other special debt	0		

\* My spouse and I jointly own our residence at 1911 Edgemont Road Upper Arlington, Ohio 43212. The property is subject to a mortgage of \$221,000, held by Century Bank, Columbus, Ohio.

### III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

**ANSWER:**

- a. Gordon Square v. Sergeant Roger Dennerll, supra. I devoted significant amounts of time over a two-year period to the representation of the plaintiffs in this action. The action, as described above, involved two women falsely accused of prostitution and solicitation, who had been physically abused by certain members of the Cleveland Police Force in the process. These women had no money to sue the City and no access to lawyers. My firm allowed me, with the help of another associate in the firm, to conduct extensive discovery in this case and spend a full two weeks trying the matter in Federal District Court on a pro bono basis.
- b. I have been appointed both by the Southern District of New York (as an intern during law school) and by the Sixth Circuit Court of Appeals to act as counsel for indigent defendants and appellants, respectively. In connection with the Sixth Circuit matter, I received compensation at the statutory rate and, in fact, was given a compensation enhancement based on the amount of work performed in the matter, but was paid at a rate far below my normal private practice rates. Again, these pro bono efforts were made possible because of the willingness of the law firms with which I was affiliated to allow me to participate in these court-sponsored programs.
- c. Assistant Attorney General Patrick Devine and I drafted an amicus brief for the State of Ohio to file in support of the State of Massachusetts' defense of its IOLTA Program--i.e., the program by which lawyers are required to place certain client funds into a pooled trust so that the interest generated may be used to help provide civil legal services to the indigent. We were successful in getting 22 other states to join our effort in support of Massachusetts, even though we filed the amicus brief at the circuit court level, something which is unusual for this or any other state.
- d. I am a founding Board Member of the Ohio Legal Assistance Foundation whose mission is to help provide funding for and determine the appropriate distribution of funds to Ohio's Legal Aid community. I was on the Committee appointed by Ohio Chief Justice Thomas Moyer to

create (via legislation and otherwise), fund and staff this Foundation.

- e. I conceived and spearheaded "Project A.G.", or "Project Above Ground", in which employees of the Attorney General's Office worked on their own time to raise money for victims of the Mid-West floods in 1993. We challenged all other State Attorney General offices to follow our lead and donated all funds to the Red Cross Disaster Relief Fund. I recently received a Certificate of Recognition from the Red Cross, which I accepted on behalf of all Ohio Attorney General employees.
  - f. I ultimately supervise and participate yearly in another Attorney General Office project -- "Project Wish List" -- which provides goods and funds to domestic violence shelters across the State of Ohio.
  - g. I participate in numerous bar association committees whose charge is to look for ways to improve the operation of and increase access to the civil justice system, including the Columbus Bar Association's Committee on Civil Justice Reform and the Ohio State Bar Association's Conclave on Education for the Legal Profession, among others.
2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

**ANSWER:**

In approximately 1984-1986 my husband was a member of the Hermit Club in Cleveland, Ohio. The Hermit Club is a club which is dedicated to the performing arts. Because my husband is a singer and enjoys singing and performing with others, he joined primarily so that he might have an opportunity to participate in the men's chorus.

At the time he joined the Hermit Club, he was aware that the Hermit Club did not accept women members but he was told that a change in policy was in progress. Specifically, he was told that women had full access to all the facilities in the club and that they anticipated that women would be able to become full members in the near future. He was informed that in all other respects the club had an open membership policy.

Sometime in 1985 or 1986, my husband approached a good friend and colleague of his and asked if he might be interested in joining the Hermit Club so that the two could participate in the men's chorus together. My husband's friend is an African-American. When my husband preliminarily put his friend's

name up for nomination to membership, he was approached and told that he would "embarrass himself" and was encouraged to withdraw the name prior to any action being taken on it.

He was shocked by the club's actions. My husband spoke to several influential members of the club and told them about his concerns. They encouraged him to withdraw the name, but to remain a member to "try to change things from within." In his view, he had been misled when he joined the club. It was unreasonable in his mind that any club would still, as late as 1985 or 1986, continue discriminatory practices, and he was thoroughly offended by what he was told.

He quit under protest, going on record in a letter objecting to their discriminatory practices. Neither my husband nor I have ever belonged to any similar club.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

**ANSWER:**

I first expressed my interest in an appointment to the federal bench in January of 1993, soon after President Clinton's inauguration. At the time, I was aware that there were three vacancies on the District Court for the Northern District of Ohio and hoped for the honor of being asked to fill one of them.

I wrote to Senators Metzenbaum and Glenn and provided them with numerous letters of recommendation written on my behalf by employers, co-counsel, opposing counsel, judges and public officials. I also provided fairly extensive background materials to both Senators on January 20, 1993 in response to a questionnaire I was given by Senator Metzenbaum's staff and thereafter had two personal interviews with each of the Senators and their staffs.

In March of 1993, I interviewed in Cleveland with two lawyers from each senatorial staff. That interview was very extensive (lasting about 1 1/2 hours) and very substantive (addressing issues from antitrust and securities law to the need for habeas corpus reform).

In May, 1993 I learned that, while I had apparently been one of the finalists under consideration, three names had been recommended to the President to fill the three Cleveland vacancies and my name was not among them.

In May, 1994 I became aware that the White House intended to fill a vacancy on the United States Court of Appeals for the Sixth Circuit with an appointee from

Ohio. I expressed an interest in that seat to both the White House and the Justice Department. As before, I provided letters of recommendation from lawyers, public officials, law enforcement and other supporters to the White House. In connection with this process, I also actively sought the support of both Senators Metzenbaum and Glenn and went to Washington to meet with the Senators and their staffs. During the same trip, I was given the courtesy of an interview with Eleanor Acheson at the Justice Department.

In June, 1994 I read in the Cleveland Plain Dealer that one of the nominees for the District Court in Cleveland had withdrawn her name from consideration. I renewed my interest in that seat by speaking to Senator Metzenbaum's Chief of Staff and Senator Glenn's Chief of Staff. Both graciously agreed to express my interest to the Senators.

Soon thereafter, I was provided background questionnaires to fill out on the chance that I might be the individual recommended to the President for appointment to the now-available Northern District seat.

In late July, 1994, Senator Metzenbaum appointed a three-person search committee whose charge was to recommend a candidate to him for this position. I and approximately eighteen other individuals were interviewed by the committee between August 10 and August 13, 1994. On August 15, 1994, the committee informed Senator Metzenbaum that it had voted unanimously to recommend me for the vacancy in the Northern District of Ohio. On August 16, 1994, Senator Metzenbaum informed me that he and Senator Glenn had agreed to send my name to President Clinton and ask that he nominate me to fill the vacant position.

Since then, I have been interviewed by the Justice Department, the Federal Bureau of Investigation and the American Bar Association. I provided each with background materials similar to the information requested in this questionnaire.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

**ANSWER:**

No.



5. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

**ANSWER:**

"Judicial Activism" is a phrase that has been used variously over the years to both praise (most prominently during the Warren era) and vilify members of the federal judiciary. Without further definition, the phrase has very little meaning. Whatever the terminology, certain principles and limits must guide a member of the federal judiciary, especially at the District Court level.

First, a district judge interprets statutes, he or she may not write them. While this act of interpretation must bring with it principles of common sense and common decency, a district judge may not reassess and revisit the policy determinations of legislators, even when mis-guided.

Next, a district judge must decide the matter before her. While a judge would be remiss if the broader implications of her decisions were lost on her, too often district judges set out to remedy broad social ills without regard to the remedies' ability to address the parties and the fact pattern at issue.

A district court is not a body which exists separate and apart from its constitutional and statutory enabling provisions. In considering issues of

standing and the jurisdictional perimeters within which a court may operate and a "controversy" must fit, a court must be guided by more than sympathy or a desire to resolve disputes. Federal Courts and state courts, while sharing many roles, exist separately and have separable charges. Federal courts must not seek to intrude on the province of state courts, even if they truly believe the state courts to be less than sufficient arbiters of the matters at issue.

These principles, not radical by any stretch, are a direct outgrowth of the notion that the court must always seek to strike a balance between its very real role in the development of legal policy, and to the extent inextricably intertwined with legal policy, social policy, and its obligations only to engage in policy development if, and of course, to the extent consistent with its constitutional and statutory limitations, and with intellectual honesty.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  O'Malley, Kathleen M.	2. Court or Organization  United States District Court, Northern District of Ohio	3. Date of Report  Sept. 20, 1994
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)  District Court Judge, Active	5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date Sept. 20, 1994 ___ Initial ___ Annual ___ Final	6. Reporting Period  Jan. 1., 1993 - Sept. 20, 1994
7. Chambers or Office Address United States Courthouse 201 Superior Avenue, N.E. Cleveland, Ohio 44114	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

## POSITION

## NAME OF ORGANIZATION/ENTITY

<input type="checkbox"/> NONE (No reportable positions)	
Chief Counsel	Ohio Attorney General (April 1991 - March 1993)
Chief of Staff	Ohio Attorney General (March 1993 - Present)
Board Member	Ohio Legal Assistance Foundation (Jan. 1994 - Present)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

## DATE

## PARTIES AND TERMS

<input checked="" type="checkbox"/> NONE (No reportable agreements)	
At termination of my current employment (upon confirmation to the Court), participation in the Public Employees Retirement System of Ohio will also be terminated.	

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

## DATE

## SOURCE AND TYPE

## GROSS INCOME

(Honoraria only)

(yours, not spouse's)

<input type="checkbox"/> NONE (No reportable non-investment income)	
1	1993 Salary - Ohio Attorney General \$ 72,526.00
2	1994 Salary to date - Ohio Attorney General \$ 69,003.39
3	1993 spouse salary - Vorys, Sater, Seymour & Pease (Law Firm) (S) \$
4	1994 spouse salary to date - Vorys, Sater, Seymour & Pease (Law Firm) (S) \$
5	Capital Gain on 1991 sale of residence (realized 10/93) (J) \$ 2,883.00

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

O'Malley, Kathleen M.

Date of Report

Sept. 20, 1994

## IV. REIMBURSEMENTS and GIFTS — transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

SOURCEDESCRIPTION☐

NONE (No such reportable reimbursements or gifts)

1

Exempt

2

3

4

5

6

7

8

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

SOURCEDESCRIPTIONVALUE☐

NONE (No such reportable gifts)

1

Exempt

2

3

4

\$

\$

\$

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

CREDITORDESCRIPTIONVALUE CODE\*☐

NONE (No reportable liabilities)

1

Society National Bank

(J) Signature Loan - unsecured

L

2

Society National Bank

(J) Master Card

K

3

Maryland Bank, N.A.

(J) Master Card

J

4

5

6

7

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

O'Malley, Kathleen M.

Sept. 20, 1994

## VII. INVESTMENTS AND TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets) <small>Indicate, where applicable, owner of the asset by using the parenthetical "(J)" for joint ownership of reporting individual and spouse, "(S)" for separate ownership by spouse, "(DC)" for ownership by dependent child. Place "(X)" after each asset exempt from prior disclosure.</small>		B. Income during reporting period		C. Gross value at end of reporting period		D. Transactions during reporting period				
						If not exempt from disclosure				
(1) Asset Code* (A-M)	(2) Type (e.g., rent or int.)	(1) Value Code* (J-P)	(2) Value Method Code* (Q-W)	(1) Type (e.g., buy, sell, transfer, redemption)	(2) Date: Month-Day	(3) Value Code* (J-P)	(4) Gain Code* (A-M)	(5) Identity of buyer/seller (if private transaction)		
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)										
1	Ohio Public Employees Retirement System	A	None	K	T	Exempt				
2	Vorys, Sater, 401(k) Seymour & Pease	A	None	D	T	Exempt				
3	Vorys, Sater, Seymour & Pease Retirement Plan	A	None	D	T	Exempt				
4	(Profit Sharing Component)									
5										
6										
7										
8										
9										
10										
11										
12										
13										
14										
15										
16										
17										
18										
19										
20										
1 Income/Gain Codes: A=\$1,000 or less B=\$1,001 to \$2,500 C=\$2,501 to 5,000 D=\$5,001 to \$15,000 (See Col. B1 & P4) E=\$15,001 to \$50,000 F=\$50,001 to \$100,000 G=\$100,001 to \$1,000,000 H=More than \$1,000,000 2 Value Codes: J=\$15,000 or less K=\$15,001 to \$50,000 L=\$50,001 to \$100,000 M=\$100,001 to \$250,000 (See Col. C1 & P3) N=\$250,001 to \$500,000 O=\$500,001 to \$1,000,000 P=More than \$1,000,000 3 Value Method Codes: Q=Appraisal R=Cost (real estate only) S=Assessment T=Cash/Market (See Col. C2) U=Book Value V=Other W=Estimated										



## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

O'Malley, Kathleen M.

Sept. 20, 1994

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

## PART III NON-INVESTMENT INCOME

	SOURCE AND TYPE	GROSS INCOME
6.	IRA Distribution - 1993	\$7,500.00
7.	401(k) Distribution - 1994 (S)	
8.	Ohio State Tax Refund (J)	5,001.00

## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature

*Kathleen M. O'Malley*

Date

*9/20/94*

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

James Arthur Beaty, Jr; "Jim Beaty"; "Bill Beaty"; "Billy Fant". Billy Fant was a name given to me by my Aunt, Ida Bell Sims Fant Neely who raised me from infancy in Thomasville, N. C.. She is my mother's (Evelyn Sims) sister and was married to Otis Fant at the time.

2. Address: List current place of residence and office address(es).

Residence: 325 Mayfair Drive, Winston-Salem, N. C. 27105  
Office: Forsyth County Hall of Justice, P. O. Box 20099  
Winston-Salem, N. C. 27102

3. Date and place of birth.

Whitmire, South Carolina; June 28, 1949

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married, June 16, 1973 to Toyoko Christine Townsend Beaty ("Toy")  
My wife is employed by Nationsbank, N. A. as a Marketing Associate.  
The business address is 380 Knollwood, Winston-Salem, N. C.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Western Carolina University: September 1967-May 1971; B.A. Political Science and History(Cum laude)-1971  
UNC School of Law: September 1971- May 1974; Juris Doctor-1974  
University of Nevada, Reno, National Judicial College  
Certificates of Completion of the Following Courses:  
1985-General Jurisdiction Course  
1989-"Handling Capital Cases"  
1991-Gender Fairness Faculty Development Workshop

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

1972-Summer Clerk Lambeth and McMillian Attorneys at Law  
Thomasville, N. C.

1973-Summer Clerk Carolina Power & Light Corporate Legal  
Department Raleigh, N. C.

1974-Associate with Richard C. Erwin, Attorney at Law  
Winston-Salem, N. C.

1977-Partner, Erwin and Beaty, Attorneys at Law  
Winston-Salem, N. C.

1978-1980 Sole Proprietor-James A. Beaty, Jr., Attorney at Law  
Winston-Salem, N. C.

1979-1981-I was appointed by Governor James B. Hunt, Jr to serve as a public member of the North Carolina Real Estate Commission. I terminated my membership on the Commission after November 1981 because of the announcement of my appointment as a Special Superior Court Judge.

1980-1981-Partner, Beaty and Friende, Attorneys at Law  
(Billy D. Friende, Jr, Partner)  
Winston-Salem and Lexington, N. C.

1981-1983-Appointed by Governor James B. Hunt, Jr to fill a two-year vacancy as a Special Superior Court Judge. A Special Superior Court Judge has the same jurisdiction and authority as a Resident Superior Court Judge. A Special Superior Court Judge is an appointed rather than elected position with a term of four years. A Special Superior Court Judge is also subject to state-wide assignment by the Chief Justice of the North Carolina Supreme Court on a weekly basis.

1983-June 30, 1987-Governor James B. Hunt, Jr. extended my appointment as a Special Superior Court Judge for a full four-year term.

June 30, 1987-December 31, 1988-The North Carolina General Assembly extended my term as a Special Superior Court Judge for an additional eighteen months. This was to accommodate a change in the status of Special Superior Court Judges. A new election district was created in my community to which I intended to seek election. The General Assembly extended my term as a Special Superior Court judge so that I would have continuous service until the new Resident seat became effective on January 1, 1989.

October, 1987-December 31, 1988-Governor James G. Martin concurrently with the action taken by the North Carolina General Assembly extended my appointment to cover the gap between the termination of the position of Special Superior Court Judge on June 30, 1987 and the effective date of the new Resident Superior Court seat on January 1, 1989.

January 1, 1989-Present-In November, 1988, I was elected as a Resident Superior Court Judge for Forsyth County for an eight year term ending December 31, 1996.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.  
  
No.
8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
  - a.) After my enrollment in College, I received an Athletic Scholarship to play football at Western Carolina University. In my senior year, I received the "CAT" Award as the "Most Inspirational Player" on the football team.
  - b.) I was selected as a member of Who's Who In American Colleges and Universities in 1970-71, and was a member of the Men's Honorary Leadership Society.
  - c.) I received a scholarship to law school as a result of my participation in the CLEO program sponsored by the University of Florida School of Law in 1971.
  - d.) I also received a Herbert Lehman Scholarship for law school as well as a tuition grant scholarship from the UNC School of Law.
  - e.) I received the America Jurisprudence Book Award for the Highest Grade in my first year Criminal Procedure Law School class.
  - f.) 1985 Community Service Award: BALSA Chapter Wake Forest University School of Law
  - g.) 1986 Community Service Award: Sophisticated Gents
  - h.) 1987 Outstanding Alumni Student Athlete of Western Carolina University
  - i.) 1990 Outstanding Trial Court Judge of the Year: N. C. Academy of Trial Lawyers
  - j.) I am a member of the Joseph Branch Inns of Courts of America which is affiliated with Wake Forest University School of Law.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

I am presently or previously have been a member of the following Bar Associations:

North Carolina State Bar; North Carolina Bar Association; Forsyth County and 21st Judicial District Bar; Winston-Salem Bar Association; National Bar Association(past); N. C. Academy of Trial Lawyers(past); N. C. Association of Black Lawyers (Secretary-1976; Vice-President-1978); Superior Court Judges Conference (Secretary/Treasurer 1982-1983); Chief Justice's Liaison Committee; Judicial Conference Committee.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

I am not involved in any organization that actively lobbies before public bodies except for the professional or bar associations that are listed in response to question nine(9).

The other groups which I belong to are as follows:

NAACP (Life Member); Alpha Phi Alpha Fraternity (Life Member); Sigma Pi Phi Fraternity; Bachelor-Benedicts, Inc. of Winston-Salem, N.C. (copies of the by-laws are attached); Reynolda Club of Rotary International.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

I was admitted to the North Carolina General Courts of Justice in September, 1974, and to the United States District Court for the Middle District of North Carolina in October, 1974.

12. Published Writings: List the titles, publishers, and dates of books, articles, reports or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Copies of the original or draft texts for the following speeches are attached:

January 29, 1993-"Homicide Defense/Prosecution-Overview and Jury Selection": North Carolina Bar Association's Third Division View From The Bench, Greensboro, N.C..



1991-Thomasville Senior High School: "Interruptions In Your Journey Through Life", A Speech Honoring Members of the High School Academic Team.

January 13, 1990-Dedication of Martin Luther King, Jr. Drive in Thomasville, North Carolina.

February 15, 1986-"Dream But Don't Sleep Too Long"; Speech for the First Annual Banquet of the Thomasville NAACP.

October 16, 1986-"We, the People" Bicentennial of the Constitution Celebration: Speech Entitled "We the People, Those Left Out: Blacks", The Struggle for Constitutional Equality". A press flyer announcing the program for the Celebration of the Bicentennial of the United States Constitution is attached.

June 10, 1984-"What Happens To A Dream Deferred", St. John AME Zion Church Mens' Day Program, Thomasville, N.C.

1981 or 1982-Speech to the graduating class of the Winston-Salem, North Carolina Police Academy.

13. Health: What is the present state of your health? List the date of your last physical examination.

Good. My most recent examination was in June 1994.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

December 11, 1981-June 30 1983-Special Superior Court Judge, appointed by Governor James B. Hunt, Jr. It is important to note that the Superior Court Bench is the highest trial tribunal in the State of North Carolina. All of the Superior Court Judges are subject to being assigned to any of the 100 counties in the state. The Special Superior Court Judge is appointed by the Governor, and is assigned on a weekly basis to any county in the state. A Resident Superior Court Judge is an elected judge who rotates every six months throughout his or her particular judicial division.

June 1983-June 30, 1987-Special Superior Court Judge, appointed by Governor Jim Hunt.

June 30, 1987-December 31, 1988-The North Carolina General Assembly extended my term through December 31, 1988 as a Special Superior Court Judge.

October, 1987-December 31, 1988-Governor James G. Martin reappointed me as a Special Superior Court Judge for the same period extended by the North Carolina General Assembly.

November, 1988-I was elected in a state-wide election as a Forsyth County Resident Superior Court Judge for a eight year term beginning January 1, 1989, and ending in December 31, 1996.

15. Citations: If you are or have been a judge, provide: (1) citations for the ten most significant opinions you have written; (2) a short summary of citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions were not officially reported, please provide copies of the opinions.

It is again important to note that the Superior Court Bench in North Carolina is the highest trial tribunal in the State of North Carolina. Judges on the Superior Court are not normally called upon to issue written opinions. However, occasionally the individual judges do issue orders or judgments which may reflect their decision on certain cases. These rulings are subject to review in both the North Carolina Court of Appeals and the North Carolina Supreme Court.

- (1) The following cases from the North Carolina Appellate Courts review trial judgments in which my rulings are discussed in detail:

- a.) State Banking Commission v. Citicorp, 328 SE.2d 895 (N.C. App. 1985).
- b.) Gardner v. Gardner, 306 SE.2d 496 (N.C. App. 1983).
- c.) State v. Chandler, 376 SE.2d 728(N.C. 1989).
- d.) Bolick v. Sunbird Airlines, 386 SE. 76(N.C. App. 1989).
- e.) National Service Industries v. Powers, 391 SE.2d 509 (N.C. App. 1990).
- f.) State v. Madric, 400 SE.2d 31(N.C. 1991).
- g.) State v. Cummings, 404 SE.2d 496(N.C. App. 1991).
- h.) Bryant v. Thalhimer Brothers, Inc., 437 SE.2d 519 (N.C. App. 1993)
- i.) State v. Rainey, 415 SE.2d 337(N.C. 1992).
- j.) Combustion System Sales v. Hatfield Heating and Air Conditioning, 403 SE.2d 600 (N.C. App. 1991).

(2)

As a trial judge, I have presided over hundreds of cases over the course of my approximately thirteen years on the Superior Court Bench. The following citations reflect those cases in which the appellate courts issued an opinion reversing the case because of a ruling I made.

Summaries of the cases that were reversed are provided here:

- a.) State v. Larry Edwards, 306 SE.2d 162(N.C. App. 1983)  
In this second degree rape case, the defendant contended that he did not have intercourse with the victim. Two doctors offered medical testimony as to whether there was evidence of gonorrhea traits as to the defendant or the prosecuting witness. As the trial judge, I overruled the defendant's objection to the offer of the testimony of both doctors. Dr. Guest examined the defendant, and Dr. DeHauf examined the victim witness. Dr. Guest offered the substantive response that the defendant was diagnosed as having gonorrhea or non-specific urethritis. Dr. DeHauf, on the other hand, after reviewing a test which he ordered for the prosecuting victim, indicated that the culture from his test was positive for gonorrhea. He then offered his opinion that the witness had been exposed to gonorrhea in the recent past. The Court found error as to the testimony offered by Dr. Guest, but found no error as to Dr. DeHauf. The error related to the offer of hearsay statements by Dr. Guest in the form of substantive evidence. As to Dr. DeHauf, the Court indicated that he could give his expert opinion on information gained from others, including laboratory tests, if it is inherently reliable, and supplied the basis for the opinion he formed. Since the testimony of Dr. Guest was allowed over the defendant's objection, the Court of Appeals found prejudicial error because of the hearsay nature of his testimony and reversed the judgment entered in this case.
- b.) State v. David Crews, 311 SE.2d 895(N.C. App. 1984)  
A deputy sheriff responded to the defendant's home in answer to an emergency call for immediate aide. When the deputy arrived on the scene, the ambulance was already there. The deputy found the defendant lying on a couch with a gunshot wound in his shoulder. The defendant's wife told the deputy that the defendant had shot himself with a .45 caliber pistol while he was in the bedroom of the house. The deputy went into the bedroom with the defendant's wife and located the bullet entry hole inside an open closet. The wife left with her husband who was taken to the hospital. The deputy, in searching for the bullet, went into the living room which had a wall adjoining the wall of the bedroom where

the shooting took place. In searching for the bullet exit hole, the deputy open a door to a closet that shared the bedroom wall. Upon opening the closet door, the deputy observed a large quantity of marijuana in the closet which became the subject of the motion to suppress. As the trial judge, I denied the motion to suppress by concluding that the officer was engaged in a "routine investigation" to locate the exit hole of a bullet which apparently went through the defendant's shoulder and entered into the wall that was shared by the bedroom and the living room where the closet was located. The Court of Appeals reversed based upon the lack of any exigent circumstances which would have justified a warrantless search. The Court further held that absent exigency, the deputy was obligated to satisfy one of the exceptions to the warrant requirement to justify a warrantless entry into the closet. The Court remanded the case for the trial Court to make findings as to whether consent, implied or actual, was given by the defendant's wife who had the authority to give consent.

- c.) Black v. Littlejohn, 312 SE.2d 909(N.C. App. 1984); 325 SE.2d 469(N.C. 1985)

This medical malpractice case was before me pursuant to a 12(b)(6) motion to dismiss filed by the defendant, Dr. Littlejohn. The defendant contended that the complaint on its face revealed that the plaintiff's claim was filed beyond the three-year statute of limitations as provided in Gen. Stat. Sec. 1-15(c). The case was filed on August 16, 1982 alleging that the defendant performed unnecessary surgery on her on October 1, 1978 when he removed her ovaries and other reproductive organs. Plaintiff indicated that she suspected, as early as August 17, 1981, that her medical condition could have been treated without surgery. The plaintiff alleged that the defendant was negligent in failing to advise her of alternative, less drastic, treatment.

The significance of the case surrounds the definition of "bodily injury" and "injury" as those terms are used within 1-15(c) to impose a statute of limitations for the filing of claims based upon the discovery of injuries, apparent and/or non-apparent. The time limit as to either apparent or non-apparent injuries commences from the last act of the defendant giving rise to the cause of action. I ruled that the last act giving rise to a cause of action in this case was the surgery on October 1, 1978 which placed the August 16, 1982 filing date beyond the three year statute of limitation. Based upon the state of the law at that time, I dismissed the

plaintiff's action. My decision was affirmed in the North Carolina Court of Appeals. The North Carolina Supreme Court reversed the Court of Appeal and my ruling by indicating that the word "injury" was not limited to "bodily injury", but rather that the term extended to the alleged negligent acts of the defendant in this case consisting of his failure to advise the plaintiff of an alternate course of treatment that could have been available to her. The plaintiff's contention on an informed consent issue was that if she had known of the alternative treatment, she would have elected not to have the "un-necessary surgery" performed by the defendant. Her August 17, 1981 discovery of this "non-apparent injury", i.e., the defendant's failure to inform her of the alternative treatment, two or more years after the defendant's last act giving rise to her cause of action, was deemed by the Court to allow the plaintiff an extra year to file her action. The plaintiff's action filed on August 16, 1982 was held to have been timely filed.

- d.) *Betty Phillips v. Kincaid Furniture and Employment Security Commission*, 313 SE.2d 19(N.C. App. 1984)  
This is an employment security commission case that was appealed to Superior Court for a determination based upon "the whole record" as to whether the employer was required to pay unemployment benefits for an employee it had terminated for alleged "misconduct". It was alleged that the petitioner/employee had refused to do work assigned to her by a person who was not in charge of her department. The record revealed that her boss was not there at the time. As a part of the record, it was alleged that the petitioner stated that she refused to work because other employees were attempting to provoke a fight between her and the new person temporarily in charge of her department. This was offered by the petitioner as good cause for her refusal to adhere to the request to do an assigned task. As the presiding judge, I ruled that this was not such "misconduct" as to deny the petitioner unemployment benefits. The Court of Appeals reversed by indicating that, even though there was some conflict in the evidence, the Commission had made sufficient findings of facts to support its conclusions of law that the petitioner's actions in refusing to work for the foreman, temporarily in charge of her department, constituted such misconduct as to deny her un-employment benefits.
- e.) *State v. Gonzalez*, 316 SE.2d 229(N.C. 1984)  
The State in a 1982 trial elected to consolidate the companion cases of three co-defendants, Oscar Gonzalez, Ralph Woods and Ervin Crawford. The one element essential to all three cases was that each defendant was charged with the armed robbery of a Montgomery County convenience store on November 22, 1981. This was a



circumstantial case in which the witnesses at the store were not able to make a positive identification of the two masked men who had come into the convenience store on the night of the robbery. There was never any testimony placing a third man at the scene of the robbery. An independent witness recalled picking up a young black male who was hitchhiking in the area shortly after the robbery. All three defendants gave an extrajudicial statement explaining in some manner his activities during the evening of the robbery. As the trial judge, I denied the defendants' respective motions for a separate trial. Along with that ruling, I ordered the State at the beginning of the trial to sanitize all three statements of each codefendant. I further ordered that the statement of any one of the codefendants could be used against him individually, but not against the other two. This appellate case, although in the name of Gonzalez, is actually the appeal of Ralph Woods for his conviction by the jury of the charge of armed robbery as well as other charges. The basis of his appeal is the error he alleged resulted from my allowing the extrajudicial statements of both Gonzalez and Crawford which were adverse to him. However, the statement of Gonzalez was sufficiently sanitized so that both the Court of Appeals and the Supreme Court in this case decided that no error resulted from the admission of Gonzalez statement. The statement of Ervin Crawford also had been sanitized at some point either before or during the trial. The defendants were given an opportunity to review all of the sanitized statements.

There was an issue raised by the Supreme Court's opinion as to whether the defendant had sufficient time to review the sanitized statement. The record was unclear as to how much time the defendant had to review the statements. It was relevant to the extent that the statement of Ervin Crawford was deemed by the Supreme Court to constitute prejudicial error in the case of Ralph Woods. Mr. Crawford's sanitized statement indicated that he did not have any knowledge of a robbery or a division of cash proceeds from a robbery. He indicated that he made a statement on November 23, 1981 to a Seagrove police officer who asked him what he knew about a robbery at a Montgomery County convenience store. Mr. Crawford specifically stated, "I told him I was with some guys, but that I didn't rob anyone, they did". Each of the defendant's attorneys had reviewed the statement prior to the time it was offered by the State. No objection had been raised about the statement prior to its admission by the State. After it was read to the jury, I instructed the jury that, as to the statements given, respectively, by Gonzalez and Crawford, they could consider it only against the defendant who had given the statement and not against the defendant Ralph Woods.

The jury returned a verdicts of guilty of armed robbery against the defendants, Woods and Gonzalez, but the defendant, Crawford was found not guilty. Gonzalez and Woods appealed their convictions. The Court of Appeals affirmed the conviction of Gonzalez, but remanded the case for additional findings by the trial court as to the voluntariness of Gonzalez's confession. As to the defendant, Woods, the Court of Appeals held that the statement given by Crawford should not have been admitted, but that there was no prejudicial error since the defendant had an opportunity to review the sanitized statement of all the defendants, but did not raise an objection at trial. The Court of Appeals determined that this was a waiver by the defendant, Ralph Woods. The Supreme Court reversed by indicating that a waiver did not occur since the defendant raised an objection and moved to strike the statement as soon as he could after it had been read to the jury. The Supreme Court held that the defendant, Ralph Woods, was denied his Constitutional right of confrontation because of the admission of Crawford's statement that he "was with some guys, but I didn't rob anyone, they did". The Court also created the principle that the defendant should have a reasonable time to review a statement that had to be sanitized. And that since the record was unclear how much time the defendants had to review the statement, this added to the prejudicial error to the extent that the objectionable portion of Crawford's statement was overlooked.

- f.) Harrellson Rubber Co. v. Layne, 317 SE.2d 737(N.C. App. 737 1984)

This case involves the question of whether the non-resident defendant was subject to the personal jurisdiction of the State of North Carolina in an action filed by plaintiff, a Delaware corporation with its principal place of business in North Carolina. In considering the questions of whether there was personal jurisdiction under our "long-arm" statute, whether there were sufficient minimum contacts with this state, and whether the exercise of personal jurisdiction over the defendant violated due process, I ruled that the defendant was not subject to the personal jurisdiction of the state, and I dismissed the case. The North Carolina Court of Appeals reversed my decision by indicating that the franchise contract between the parties was the type of activity that is subject to personal jurisdiction under our long-arm statute. The Court further indicated that the shipment of retread materials out of the state, and the delivery of payment for these materials to this state constituted an on-going vendor-vendee relationship between the parties so as to meet the minimum contacts test. Even though it was acknowledged that the defendant was never physically

present in the state, the contractual relationship was sufficient reason to provide a forum to the plaintiff to resolve disputes on the agreement between the parties. The Court resolved the due process requirement by stating that it would be just as inconvenient for the North Carolina plaintiff to travel to the defendant's home state of Virginia as it would be for the defendant to travel to North Carolina to resolve this dispute.

- g.) Terry v. Bob Dunn Ford, 335 SE.2d 227(N.C. App. 1985)  
The plaintiff filed a civil action against the defendant for an unlawful conversion of the plaintiff's vehicle. At the time the case was called for trial, the plaintiff did not appear. However, he was represented at the call of the case by his attorney and his wife who was prepared to testify regarding the allegations in the complaint. The defendant, thereafter, made a motion to dismiss the plaintiff case since the plaintiff failed to appear to prosecute his case. Upon my granting the motion, the plaintiff appealed my ruling. My judgment was reversed on the ground that since the plaintiff had not been ordered to be in court, he did not have to be there. The Court further found that the appearance of the plaintiff's attorney of record was sufficient to meet the requirements of the requirement that he prosecute his action.
- h.) C.A. Campbell v. Connor, 335 SE.2d 791(N.C. App. 1985)  
This case involved a jury trial on the question of whether the petitioner was entitled to the establishment of a cartway across the respondent's land. The basis of the plaintiff's cartway request was that he did not have adequate access to a public road other than through the respondent's property. The petitioner was nevertheless required to establish that alternate outlets from his own property, without going over the defendant's property, were inadequate. The petitioner's evidence did not reflect whether he would not have adequate access over his own property without going over the respondent's property. The respondent made a motion for directed verdict against the petitioner at the close for the evidence, which I denied as the trial judge. The jury awarded the plaintiff a cartway. The respondent appealed the matter to the Court of Appeals which reversed the case by indicating that as the Trial Judge, I should have allowed the respondent's motion for directed verdict. The basis for the appellate ruling was that the petitioner's evidence had failed to establish that he did not have adequate access across his own land so as to justify the necessity of having a private cartway over the land of another person.

- i.) *State v. McCabe*, 343 SE.2d 582(N.C. App 1986)  
 The defendant was originally charged with first degree rape and first degree kidnapping on May 29, 1984. The rape charge was sufficient to charge the defendant with first and second degree rape, but it was not sufficient to charge him with rape of a person mentally incapacitated or physically helpless. Defendant pled "not guilty" to these charges. A jury had been selected for the original charges. However, a superseding indictment was obtained by the state charging the defendant with two counts of first degree rape and second degree rape of a person mentally incapacitated or physically helpless involving the same witness alleged to be the victim in the original charges. The defendant was served with this superseding indictment and given notice thereof on January 29, 1985 when his case was called for trial on the original charges. The defendant was arraigned on the superceding indictment which charged him with the two counts of first degree rape and the offense of second degree rape of a person mentally incapacitated or physically helpless, and he pled "not guilty". The defendant objected to being tried during the same week in which he was arraigned on the new charges and moved for a continuance. Since the same victim was involved, I denied the defendant's motion to continue the trial of this new charge. The jury found the defendant guilty of first degree kidnapping and second degree rape. On appeal, the defendant, contended that he should not have been forced to trial in the same week that he was arraigned pursuant to 15A-943. The Court of Appeals held that this was a procedural error and granted the defendant a new trial.
- j.) *Jarvis v. Powers*, 343 SE.2d 195(N.C. App. 1986).  
 The plaintiffs in this case sought to establish a neighborhood public road pursuant to N.C. Gen.Stat. Sec. 136-67 across land claimed by the defendants. After substantial evidence was presented as to the history(dating back to the 1930's) of the various sections of the tract in question, I determined that the plaintiffs were entitled to a neighborhood public road providing access of ingress and egress from an existing public road over the tract in question leading to Muddy Creek. This was based upon the language which allowed the recognition of a public road under Sec. 136-67 of the General Statutes. One of the specific exclusions which prevented the creation of a "neighborhood public road" was a showing that the tract in question had been used essentially for a private purpose by prior owners. This would mean that if the tract in question, historically, had not been used essentially for private use, then a neighborhood road could be established under Sec. 136-67. However, if the tract had been used for essentially a private use over the years, then a

neighborhood public road could not be established under Sec. 136-67. The Court of Appeals reversed my judgment in this case because my findings of fact and conclusions of law did not rule out the possibility that the tract in question had served essentially a private use in prior years.

The case was remanded for the sole purpose of having the trial court make this finding of fact as to the nature of the prior use of the property.

- k.) State v. Linda Brown, 343 SE.2d 557(N.C. App. 1986)  
The defendant in this case was indicted for embezzlement of cash from a partnership which was identified as "Lott-Brown, d/b/a Jean Lott, a partnership". The indictment alleges further that the defendant was "the administrator, agent, bailee, consignee, clerk, employee, executor, guardian, officer, public officer, receiver, servant, trustee, and fiduciary of Lott-Brown, a partnership, and in that capacity had been entrusted to receive cash of the partnership but that she had taken it for her own use. The defendant moved to quash the indictment since the defendant was a partner of the "Lott-Brown" partnership and therefore could not be charged with embezzlement. I asked the defendant's counsel if there were any contentions that the defendant Brown was an employee of the partnership rather than a partner. The defendant's counsel, without objection from the State's attorney, stated that there was no such contention. He further indicated to the Court without objection from the State that the defendant, Brown, was a 50-50 owner of the proceeds and losses of the firm. The State conceded that a partner could not be charged with embezzlement. As the trial judge, I granted the defendant's motion to quash the indictment based upon the representation that the defendant was a partner in the firm. This decision was reversed by the Court of Appeals on the basis that I should not have relied upon the unsworn statement of the defendant's counsel that the defendant was a partner in the firm known as Lott-Brown, a partnership. The Court, however, instructed the State on remand of the case to determine if the defendant was indeed a partner in the firm. The Court recommended that the State should dismiss the case if the defendant, Linda Brown, was a partner in the Lott-Brown firm.
- 1.) Carefree Carolina Communities v. Cilley, 370 SE.2d 81(N.C. App. 1988)  
This case was initiated by the plaintiffs in response to the defendants pursuing a foreclosure on two deeds of trust securing the purchase price of 319.29 acres of land. The plaintiff had not raised any legal issues as to the validity of the debt, the default thereon, nor



the right of the defendant to foreclose on the property. But rather, the plaintiff contended that the corporate defendant, which was pursuing this foreclosure proceeding, were partners in the transaction, and wrongfully hindered the plaintiff's development of the land. As the trial judge, I allowed the corporate defendant's motion for summary judgment against the plaintiff's in the foreclosure proceeding, since there did not appear to be any conflict in the material facts as to the issues that were involved in the foreclosure proceeding itself. The Court of Appeals reversed my granting of the defendant's motion for summary judgment based upon its determination that the materials and documents considered by the Court on the summary judgment motion raised material issues of fact which should have been presented to a jury.

- m.) Robinson v. Flaherty, 377 SE.2d 806(N.C. App 1989)  
This case was filed by the petitioner, Mary Robinson against the respondent, the North Carolina Department Human Resources, Department of Social Services which sought to recover \$852 in overpayment made to the petitioner by reducing the petitioner's monthly AFDC check. As the trial judge, I upheld the recoupment scheme used by the department in calculating how much of the plaintiff's current social services benefit could be taken before there was damage to the plaintiff's ability to have a monthly income adequate to take care of the needs of her family. The Court of Appeals reversed my decision upholding the department's scheme of recoupment on the basis that the department exceeded its authority by considering Section 8 utility allowances paid to the petitioner as a part of its calculation of the appropriate recoupment deduction from the petitioner's current "income".
- n.) State v. Duane Brown, 383 SE.2d 910(N.C. 1989)  
Prior to the trial of this case, the Attorney appointed for the defendant by the District Court Judge, appeared before me with a request that he be permitted to use his paralegal assistant in filing motions and doing legal research. This was in lieu of the appointment of a second licensed attorney which is required in a capital case. I allowed his preliminary request to use his paralegal at the State's expense to assist him in the initial research and motion filing matters. The Attorney, Mr. Arthur Vann, did not subsequently request any additional legal assistance for the trial of the matter as a capital case before a different presiding judge. At the defendant's trial, a substantial period of time after I held court in Durham County, the defendant was convicted of first degree murder and received the death penalty. Since Mr. Vann did not seek the appointment of an additional licensed attorney to

assist him the trial, the judgment imposing a death sentence was reversed. The defendant was awarded a new trial. The Court did acknowledge that the second counsel could be waived by the defendant if the waiver is made knowingly and intelligently. But a waiver of the second counsel will not be presumed without specific findings in the record. Since the lead counsel did not request a second attorney, nor was one appointed by the presiding judge at trial, and the record was silent as to any waiver of the second counsel by the defendant, the Court held that prejudicial error resulted from the failure to appoint a second attorney. The defendant was granted a new trial.

o.) In The Matter of R.J. Reynolds Tax Assessment, 385 SE.2d 161(N.C. App 1989)

This case involves a reversal of my ruling as a trial judge upholding the assessment by the North Carolina Department of Revenue of additional interest on taxes that were due by R.J. Reynolds Tobacco Company for the year 1983. The question was one of when the taxes were due for the purpose of collecting interest on the late payment of the taxes, if any. The underlying controversy arose over an assessment of local property taxes by Forsyth County and the cities within the county against R. J. Reynolds as a manufacturer. R.J. Reynolds paid the taxes under protest, but they took a credit for the taxes paid against their state income taxes for the year 1983. The company appealed the assessment of this tax. The taxes assessed by the county and the cities was subsequently invalidated. The municipalities paid a refund of the taxes to R. J. Reynolds, but without interest. Since the company had taken a credit for the taxes paid against its 1983 state income taxes, it recomputed the taxes due and finally paid the 1983 taxes due on September 27, 1985. The State Department of Revenue accepted the recomputed taxes, but also assessed interest on the taxes paid from the March 15, 1984 original due date for the 1983 tax return. Again, the company paid this assessment of interest under protest, and this action was to get it back. The State determined the interest was due based upon statutory authority that covered the situation where an improper assessment had been made for manufacturer's property taxes and a subsequent refund was awarded. G.S. 105-241.1 provided that if it were determined that additional taxes were due, then the taxpayer would be notified of the amount and kind of taxes due; and that all additional taxes, "shall bear interest from the time the taxes or additional taxes were due until paid". I ruled, consistently with the State, that the taxes were due as of March 15, 1984 which was the original due date for the company's 1983 state income taxes. I concluded that the interest was to be computed from March 15, 1984. The

Court of Appeals reversed my ruling by holding that the taxes were not due until the company had received a refund of the invalidated taxes and recomputed its 1983 income by discounting the credit it had taken, but was not now entitled to, for the year 1983. The Court of Appeals ordered that the interest payments based upon a March 15, 1984 due date for the 1983 taxes were to be refunded back to R. J. Reynolds Tobacco Co.

p.) State v. Sleagle, 385 SE.2d 535(N.C. App. 1989)  
The defendant in this case was operating a motor vehicle around 1:00 a.m. when he had an accident by running into a ditch. He and his companion walked away from the scene to call the defendant's parents. On the way back to the car, they were approached by an officer who had heard the radio transmission of a car found in the ditch with blood in the area. When this officer asked what happened, both of the young men responded that they had been in an accident. This officer asked for their drivers' licenses and radioed a second officer to the scene. Without advising either of the young men of their rights pursuant to Miranda, the second officer asked who was driving. When the defendant indicated that he was, the second officer detected an odor of alcohol about the defendant. The defendant was requested to perform sobriety test, and thereafter arrested for driving while impaired. He was taken to the police station, and requested to submit to a chemical analysis of his blood. It was at this time that he was advised of his Miranda rights. I allowed the defendant's motion to suppress the statements made to the officer prior to the defendant being advised of his rights. The Court of Appeals indicated that the defendant was detained only for a few minutes, he was in the presence of no more than three officers, that the questions were asked only to determine the identity of the driver of a wrecked vehicle, and that the questions were asked only to allow the officer to complete his accident investigation report. The Court of Appeals, based upon the stated findings, reversed my ruling, allowing the defendant's motion to suppress, because it held that there was not a custodial interrogation of the defendant.

q.) Schall v. Jennings, 393 SE.2d 130 (N.C. App. 1990)  
This case involved a contract dispute between the plaintiff, a native of Paris, France, and his former son-in-law, who was alleged to be a resident of London, England. The particular issues involved were whether the Court had subject matter and personal jurisdiction over this case. I dismissed the case at the close of the plaintiff's case based upon the defendant's argument of lack of subject matter and personal jurisdiction. The Court of Appeals reversed my ruling upon finding that

the amount of the loan in controversy was within the jurisdiction of Superior Court. It also held that since the defendant was served with a summons while he was in North Carolina, this method of service conferred personal jurisdiction over a nonresident party.

- r.) State v. Bernard Penn, 398 SE.2d 873(N.C. App. 1990)  
This criminal case involved two co-defendants accused of second degree murder. Of all the issues addressed in this case, it was reversed only as to the defendant, Bernard Penn, because of my ruling allowing the use of a statement the defendant made to his wife prior to killing the victim, Danny Boy Hooper. The defendant contended on appeal that the statement he made to his wife out of the presence of the co-defendant, Holmes and the victim, Hooper, that "he was going to kill Hooper because he had messed up some of his money" was a privileged confidential communication between he and his wife. The defendant objected to the wife's voluntary election to testify against him. Based upon arguments presented by the State, I found as a fact that the privilege did not exist because the communication was an expression of an intent to do an illegal act. I further found as a fact that the evidence sought by the state was mere corroboration of statements that the defendant had made to others that he was going to kill "Danny Boy". An additional basis for my ruling was the fact that the defendant's wife was competent to testify against her husband even if he objected to her doing so. The Court of Appeals reversed my ruling on this subject because the defendant was entitled to assert the privilege, even though his wife was otherwise competent to testify against him.

- s.) Sturm v. Schamen, 393 SE.2d 432(N.C. App 1990)  
The plaintiff filed this action to recover for unfair trade practices and damages as a result of losses from alleged unauthorized stock trades by his broker, the defendant. The defendant filed a motion to dismiss or, alternatively, to stay the case and compel arbitration. I denied all of the defendant's motions, and the defendant appealed. The question for the appellate court was whether the defendant had waived his right to compulsory arbitration based upon a contract with the plaintiff. The Court indicated that the plaintiff had to show some prejudice to him by the defendant's delay in seeking arbitration.

Since the Court did not find a waiver, it reversed my ruling denying the stay the motion for a referral of the case to arbitration. The Court of Appeals affirmed my ruling denying the defendant's motion to dismiss the plaintiff's case.

malicious prosecution and demanded punitive damages against each of the defendants. The dispute arose over the ownership of a small parcel of land that actually was within the boundaries of the defendants' property line, but which had been fenced in by the plaintiff prior to the defendants' purchasing the property and moving into the neighborhood. The claims of Mr. Wilson (age 78) and Mrs. Wilson (age 68) for intentional infliction of emotional distress were based upon the defendants allegedly cursing and threatening them, reporting them to the city for alleged violations of city ordinances, throwing trash into the plaintiff's yard, and making obscene gestures to them and their children.

At the close of the plaintiffs' case, I granted both defendants' motions directed verdict as to all of Mrs. Wilson's individual claims. I also granted Mrs. Pearce's motion for directed verdict of Mr. Wilson's claim of malicious prosecution against Mrs. Pearce, but I denied Mr. Pearce's motion for directed verdict against Mr. Wilson's claim for malicious prosecution. In addition, Mr. Wilson's claim for punitive damages was not submitted to the jury. The jury returned a verdict against Mr. Pearce on all issues submitted against him, and awarded the plaintiff, Mr. Wilson, \$65,000 for intentional infliction of emotional distress and \$25,000 for malicious prosecution. Both parties appealed my rulings to the Court of Appeals. All of the rulings which allowed submission of Mr. Wilson's individual claims against Mr. Pearce were affirmed on appeal. The Court, however, viewed the evidence against Mr. and Mrs. Pearce to be outrageous enough to have required the submission of all the claims of both plaintiffs, including punitive damages, against both of the individual defendants. My rulings granting directed verdicts against the plaintiffs' claims were reversed and the case was remanded for trial of those issues. The Court, however, upheld my submission of all the claims that Mr. Wilson individually had against Mr. Pearce.

- v.) *Yates v. New South Pizza, Ltd.*, 412 SE.2d 666(N.C. 1992). This is a case of first impression before the North Carolina Supreme Court. Procedurally, my ruling, as discussed herein, was affirmed by the Court of Appeals. The Supreme Court, upon addressing the issues reversed the Court of Appeals decision. The facts reveal that the plaintiff, Anthony Yates, was a passenger in a car owned by Hobert Simmons and operated by Lisa Simmons. Lisa Simmons was involved in an automobile accident with a car being driven by Donald Powell. Mr. Powell was a delivery man for the defendant, doing business as Domino's Pizza. Mr. Powell, while delivery pizza, ran a stop sign and collided with the Simmons' car. Mr.



- t.) *Landingham Plumbing v. Funnell*, 403 SE.2d 605 (N.C. App. 1991)

This case involved my ruling, as a trial judge, dismissing the defendant's appeal of an adverse judgment against him pursuant to Rule 25 of the Rules of Appellate Procedure. Rule 25 allows a dismissal of an appeal if the appellant fails to give timely notice of appeal. The underlying basis of this ruling was a determination that under Rule 3(c) of the Appellate Rules, the defendant failed to give written notice of appeal within 30 days after entry of the adverse judgment. Rule 3(c) also provides that the running of the time for filing and service of a notice of appeal is tolled as to all parties when a timely motion is filed by any party for a motion for new trial under Rule 59. This means that the full time for appeal begins to run from an entry of an order upon a motion for a new trial.

The facts show that on December 15, 1989, the verdict was rendered against the individual defendant, but not the corporate defendant. The trial court announced the judgment in court, and directed the plaintiff's attorney to draft the judgment. The judgment was signed by the Court on December 22, 1989, and filed on December 27, 1989. The plaintiff filed a motion for new trial as to its claim against the corporate defendant on January 2, 1990. On March 8, 1990, the plaintiff withdrew its new trial motion. The defendant, Funnell, finally, on March 23, 1990, filed a written notice of appeal from the original judgment which was officially filed on December 27, 1989. In response to the defendant's notice of appeal, filed on April 3, 1990, the court filed the motion to dismiss the defendant's appeal which I granted. The Court of Appeals reversed my ruling and held that when a motion specified within Rule 3 is filed, after entry of judgment, the opposing party's time for appeal is tolled. And if the motion for a new trial, by any party, is withdrawn, then the opposing party has 30 days from the withdrawal of that motion to appeal. This meant that the defendant's notice of appeal filed on March 23, 1990 was timely and should not have been dismissed. My ruling was based upon the portion of Rule three(3) of the appellate rules of procedure which required the notice of appeal in this case to have been filed within thirty days of the date of the filing of the judgment on December 27, 1989.

- u.) *Wilson v. Pearce*, 412 SE.2d 156(N.C. Ct.App. 1992)  
Mr. and Mrs. Wilson filed an intentional infliction of severe emotional distress claim against Mr. and Mrs. Pearce. Each of the plaintiffs alleged "mental distress of a very serious kind" as a result of the defendants' conduct which "exceeded all bounds of decency tolerated by society". The plaintiffs also alleged claims of

Yates suffered personal injury and permanent damage. The plaintiff settled with Donald Powell and his insurer upon the payment of \$25,000 which was the full policy limits of Mr. Powell's vehicle coverage. The plaintiff also executed a covenant not to sue Mr. Powell or his insurer, but he expressly reserved all rights to proceed against the defendant, New South Pizza, d/b/a, Domino's Pizza, the employer of Mr. Powell.

The plaintiff brought this claim to recover damages against the defendant as a joint tortfeasor with Mr. Powell who had settled his claim with the plaintiff. The plaintiff alleged that New South was liable to him on the theory of respondeat superior, however, he did not allege any separate acts of negligence on behalf of the defendant company. As the trial judge, I allowed the defendant's motion for summary judgment since the defendant had only vicarious liability. This meant that since the plaintiff had released the negligent driver, then it also released New South since there were not any allegations of independent negligence on behalf of the defendant. The Supreme Court relying on the State's Uniform Contribution Act indicated that the defendant, New South, fit the definition of a joint "tortfeasor" since it had some vicarious liability as the employer of Donald Powell who was acting within the scope of his employment. This was true even though he was operating his own vehicle. The Court cited the language of the Uniform Contribution Act which states the following as it relates to a release of a person having joint or several liability: "when a release or covenant not to sue is given in good faith to one of two or more persons liable in tort for the same injury or the same death, it does not discharge any of the other tortfeasors from liability". The Court's holding is that just the master-servant relationship itself is justification for placing New South within the definition of a tortfeasor since they may have some liability in tort for the injuries to the plaintiff. Once the Court classified New South as a tortfeasor, it held that pursuant to the clear language of the contribution statute, the release or covenant not to sue executed by the plaintiff with the negligent driver did not release New South which was defined by the Court as a joint tortfeasor. The Court therefore reversed my granting the defendant's motion for summary judgment.

- w.) Lusk v. Crawford Paint, 416 SE.2d 207(N.C.Ct.App. 1992)  
The plaintiff began this case by filing an application and order extending time to file a complaint on April 12, 1990, thereby requiring his complaint to be filed on May 10, 1990. Plaintiff, thereafter, filed the complaint along with a delayed service of complaint form on May 20, 1990. The plaintiff served a Civil Summons

To Be Served With Order Extending Time To File A Complaint along with a copy of the Application and Order Extending Time to File A Complaint to the defendants by certified mail, return receipt requested, on May 9, 1990.

A period of eight months elapsed between the summons initiating the action and the time the defendants finally received the actual complaint in the case. As the trial judge, I allowed the defendants' motions to dismiss the case because of the failure of the plaintiff and his counsel to comply with the service of process Rules 3 and 4 of Rules of Civil Procedure. This was the basis of the motions for dismissal joined in by all of the defendants. The appellate court reversed my ruling indicating that since Rules 3 and 4 do not have a stated time requirement for serving a complaint, there was not a violation based upon the facts in this case. The Court stated, however, that the action of counsel in delaying the serving of the complaint may have been inadvertent or neglectful, but the facts of this case did not suggest any delaying tactics on behalf of counsel to gain an unfair advantage over the defendants. The Court's opinion offered an invitation to the Legislature to set a time limit for service of complaints within rules 3 and 4 of the Rules of Civil Procedure.

- x.) Shields Inc. v. Metric Construction, 416 SE.2d 597(N.C. Ct.App. 1992)

The defendant was the general contractor for a hotel project on the campus of Duke University. The plaintiff was a subcontractor for framing of the roof which is at issue here. The plaintiff had submitted its bid based upon the use of 20 gauge material for the construction of the roof.

The plaintiff was responsible for submitting shop drawings as to how the roof would be built. Its expert indicated that the more expensive 18 gauge material would be more appropriate for the construction of the roof which had been designed by the defendants. The plaintiff notified the defendants that the use of different material than was listed in the defendant's original design would raise the expenses of the plaintiff. A written change order was discussed, but it was not prepared. The plaintiff contended that it was advised by the defendants to proceed with the use of the more expensive materials. The plaintiff requested payment of the additional expenses for using the material that was not specified in the original plans. This case was brought by the plaintiff alleging negligence in the original design by the defendants.

The defendant contended that the plaintiff was contributory negligent in failing to verify the accuracy and feasibility of the defendant's plans which specified the use of 20 gauge rather than 18 gauge material in the roof.

Based upon the evidence, I submitted the issues of negligence and contributory negligence which deemed appropriate by the North Court of Appeals. The jury found that the defendant was negligent in providing the plaintiff with contract documents containing inadequate information for the plaintiff to bid on the project. The jury also found that the plaintiff contributorily negligent in failing to verify which gauge of material would have been required prior to making its bid on the project. The plaintiff therefore was denied any recovery on the negligence issues. The Court of Appeals ruled that submission of the negligence issues was proper, but found error to the extent that my jury instructions did not adequately explain the plaintiff's duties in submitting a bid of this type as it affected the issues of contributory negligence. The Court of Appeals indicated that even without a request, I should have instructed the jury on the issues raised by inference as to a breach of contract and a claim of quantum merit which may have been available to the plaintiff because of the expense incurred for the more costly material which benefited the defendant. Based upon this inference from the evidence, and the failure to submit issues on these subjects, the Court of Appeals held that there was prejudicial error and granted the plaintiff a new trial.

y.) State v. Boyd, 418 SE.2d 471(N.C. 1992)

I was assigned to hear pre-trial motions in this capital murder case. The defendant requested state funds for the appointment of an expert in the field of psychology. The defendant, however, was represented by retained counsel who appeared for him at this hearing. I inquired whether defendant was indigent and determined that indeed he was indigent. The retained counsel had been provided for him by his family. I offered the defendant a court appointed counsel which he refused. I, thereafter, ruled that since he had retained counsel, he was not entitled to state funds to hire an expert to assist him in the private defense of his case. A different judge presided over the trial in which the defendant received the death penalty. The verdict was appealed. The North Carolina Supreme Court reversed the case on other grounds for error committed by the trial judge. It did address, collaterally, the ruling I had made in denying the defendant state funds to hire an expert. The Court announced that a defendant is, nevertheless, obligated to pay whatever he can for his defense, but once



his funds run out, he can apply to the state for assistance. The Court reversed my ruling, but indicated further that the question of whether the defendant had any "particularized need" for expert assistance was still a matter for the trial court even though the defendant might be indigent at the time he applies for state funds.

- z.) *Bosely v. Alexander*, 442 SE.2d 82 (N. C. 1994)  
 This case involved an automobile/pedestrian accident in which the plaintiff, a construction flagman, was struck from behind by the defendant driver as the plaintiff was walking away from his designated area in the roadway. The defendant indicated that she did not see the plaintiff. As the trial judge, I submitted an issue of contributory negligence to the jury based upon all of the evidence at trial, and at the defendant's request. It is to be noted that the rule in North Carolina is that a plaintiff cannot recover anything for injuries if the plaintiff is found contributorily negligent. In this case, the jury found the plaintiff contributorily negligent and, therefore, denied him any recovery. The Court of Appeals reversed the jury verdict by holding that, while contributory negligence was properly submitted to the jury, I should have used additional language in defining the duty the plaintiff had as a flagman on the contributory negligence issue.

- aa.) *Holly Farm Foods v. Kuykendall*, 442 SE.2d 94 (N.C. App. 1994)  
 This was a non-jury matter submitted to me as the trial judge on stipulated facts involving the question of whether additional rents were due to the lessor after the lessee defaulted on the lease agreement. The lessor chose summary ejectment as his remedy, but nevertheless, the lessor sought the remaining rents due on the lease from the plaintiff in this case as the guarantor of the lease. The plaintiff, as guarantor, paid the amount alleged to be due, and brought this action against the lessee with whom it had a contract for a franchise operation located at the leased site. I ruled that there was a breach of the agreement by the defendant in their contract with the plaintiff. I awarded damages in the amount which the plaintiff had paid the lessor for the rents due under the balance of the lease term. The Court of Appeals reversed my judgment with the indication that since the lessor had elected his remedy of summary ejectment and relet the premises, he was not entitled to recovery of rents remaining under the lease term. Therefore, the lessee and the plaintiff as guarantor had no further obligations under the terms of the lease. The Court further indicated that any claim that the plaintiff had against the defendant(lessee) was based upon their contract for the franchise operation and not based upon the default of the lease. Therefore, the lease



payments made in error by the plaintiff could not be the basis of any recovery the plaintiff had against its franchisee, the lessee under the lease.

bb.) State Farm Mutual Insurance Co. v. Young, 443 SE.2d 756(N. C. App. 1994)

The plaintiff brought this declaratory judgment action to determine its obligation within "underinsured" motorist coverage policies it had issued to Andrew Young and his ex-wife, Mary Wimberly. The facts reveal that their minor child, Nicholas Young, was injured as he was a passenger in his father's car. The father's negligence was the sole cause of the injury to the child. It was stipulated that the child was a member of both households. Andrew Young had been issued separate policies on two cars by the plaintiff providing for liability and underinsured motorist coverage. The policy limits were \$100,000 per person and \$300,000 per accident. The plaintiff had also issued a separate policy on Mary Wimberly's automobile with the same \$100,000/\$300,000 coverage. The plaintiff paid \$100,000 to the minor child as a part of its liability coverage under Andrew Young's policy. The child's injuries exceeded the liability limits of the policy. The plaintiff denied payment for any underinsured motorist coverage on the basis that "intra-stacking" was not permitted within one policy for an insured when the liability limits of the policy had been paid in full. Since it was stipulated that the child was a member of both households, the defendants(as parents of the minor child) also sought benefits under the underinsured motorist clause of Mary Wimberly's policy. The plaintiff contended that additional benefits were not available since the language of its policy specifically excluded underinsured coverage for a vehicle owned by the insured. I granted the plaintiff's motion for summary judgment to the extent that the language of the policy specifically excluded a vehicle owned by the insured from underinsured motorist coverage.

The Court of Appeals acknowledged that this was an unsettled area of the law, but it indicated that the North Carolina Financial Responsibility Act by inference provided underinsured motorist coverage for the benefit of the minor child. The implication is that since the State insurance coverage statute does not specifically exclude underinsured motorist coverage for a vehicle owned by the insured, then the legislature intended that an insured could have coverage under a policy on the insured's own vehicle. The Court further held that since coverage was extended by implication under the statute, then there was a conflict between the language under the plaintiff's policy and the statute. In an effort to always allow coverage for injuries, the Court held that

the statute's extension of coverage would control rather than the language of the policy when there was a conflict to existence of coverage. The Court reversed my granting of summary judgment for the plaintiff, State Farm Insurance Company.

(3)

a.) State v. Gibbs, 436 SE.2d 321 (N. C. 1993)

This case involves a multiple killing capital murder trial. Mr. Gibbs was sentenced to death for the first degree murder of three members of his estranged wife's family. The Constitutional issues involved included those normally associated with the death-qualification of the trial and sentencing jury. The rulings I made on granting or denying challenges for cause as to prospective jurors were reviewed and upheld by the North Carolina Supreme Court. In addition, the findings of facts and conclusions of law which I made, as the trial judge, on the issues raised by the defendant based on his right to counsel under the Fifth and Sixth Amendments to the United States Constitution as well as Article I, Sec. 19 and 23, of the North Carolina Constitution are reviewed and upheld by the North Carolina Supreme Court.

b.) State v. Eley, 392 SE.2d 394 (N.C. 1990)

This is a capital murder case in which I was the presiding judge. Due to the extensive pre-trial publicity, it was necessary to select a trial jury from an adjoining county. Once the jury was selected, the case was moved back for trial to the county in which the first degree murder took place. At trial, the Constitutional issues associated with the defendant's right to counsel under the Fifth and Sixth Amendment of the United States Constitution were addressed extensively by my rulings and subsequent order in support thereof. The only issue raised on appeal by the defendant addressed whether or not I had jurisdiction to remove the case from the county where the jury selection took place back to the county where the killing took place.

The North Carolina Supreme Court, after some extensive discussion of the procedural facts of the case, determined that I had jurisdiction to preside over the trial under Article 4 Sec. 9, and 11 of the North Carolina Constitution. The life sentence which the defendant received upon conviction of first degree murder in this case was affirmed.

c.) State v. Lot and Building, 421 SE.2d 374 (N.C.App. 1992)

This case arose out of a civil forfeiture proceeding initiated by the State under the State Racketeer Influenced and Corrupt Organizations Act (RICO). The State sought forfeiture of a criminal defendant's "lot

and building" as result of convictions he had received for gambling activity. The State contended that these convictions, though misdemeanor offenses under North Carolina law, constituted "a pattern of racketeering activity" so as to justify forfeiture under the RICO statute. As the trial judge, I ruled that the gambling convictions the individual defendant had received constituted both racketeering activity and a pattern of racketeering activity under the State RICO act and as defined within the Federal statute. The defendant contended that the State statute was constitutionally vague, but he failed to preserve the Constitutional issues for review on appeal. The North Carolina Court of Appeals, however, does make reference to the distinction between misdemeanors and felonies as it discusses what acts may be chargeable by indictments under Article I, Sec. 22 of the Constitution of North Carolina. This was significant to the defendant's contention and my ruling as the trial judge, since I initially had to decide whether the convictions of the individual defendant in this case satisfied the federal criteria for "racketeering activity" under U.S.C. Sec. 1961(1). It is important to note that the North Carolina RICO statute incorporates by reference the offenses listed in the Federal RICO statute for the purpose of determining "racketeering activity". The North Carolina Court of Appeals upheld my ruling in this case.

- d.) State v. Chandler, 376 SE.2d 728 (N.C. 1989)  
 The defendant in this case was charged with several counts of first degree sexual offense, as well as taking indecent liberties with a minor child. The case, as reported, was ultimately tried in Buncombe County by a different presiding judge, but the offenses originated in rural Madison County, North Carolina. I initially presided over a two week trial which ended in a mistrial. I was subsequently re-assigned to Madison County for the purpose of hearing a motion made by the State for a change of venue of the entire case from Madison County to Buncombe County, North Carolina. The defendant resisted the State's motion by suggesting that he had a Constitutional and common law right to a trial by a jury from the area where the alleged crime took place. The defendant also alleged that he had a statutory right to venue in the county where the crime took place. The defendant also offered the Sixth Amendment of the United States Constitution and Article I, Sec. 24 of the North Carolina Constitution as ground for his right to be tried by a jury in the county where the crime originated. I made specific findings and conclusions of law in support of allowing the State's motion to change venue from Madison County to Buncombe County. The North Carolina Supreme Court upheld my ruling by indicating that any statutory limitations on the power of the Court to order

a change of venue were preempted by my inherent authority as a Superior Court Judge to order a change of venue in the interest of justice.

e.) State v. McCoy, 359 SE.2d 764 (N.C.App. 1987)

In this capital murder case, the defendant raised the Constitutional argument that pursuant to the Sixth Amendment of the United States Constitution, made applicable to the states by the Fourteenth Amendment, he was denied his right to a jury selected from a representative cross section of the community in which he lived. The issues were raised pursuant to the defendant's motion to quash the indictment because of the computer method used by the Rutherford County jury commission in the selection of the jury venire. The defendant contended that it was more likely that a juror living a rural area would be selected for jury duty rather than a city dweller. The defendant had contended that the city dwellers were a cognizable group that should be fairly represented in the jury venire, but this argument was rejected at trial and on appeal. Since the defendant was black, and most of the black citizens lived in the urban cities of Rutherford County, the defendant further contended that members of this cognizable group were systematically excluded from jury service by the computer method of jury selection. The defendant did not contend nor did his evidence reveal, that the computer method of selection used by the Rutherford County jury commission violated statutory requirements. In addition, the defendant did not contend that the jury commission of Rutherford County intentionally discriminate against any group, blacks or urban dwellers.

As to his contention that blacks had been systematically excluded from jury service in Rutherford County by the computer method of selecting the jury venire, the defendant failed to provide sufficient evidence of this at trial. I denied his motion to quash the indictment, and this ruling was affirmed by the North Carolina Supreme Court.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

In 1979, I announced my intention to pursue a seat in the North Carolina General Assembly representing Forsyth County. The matter was handled entirely by the local Democratic Executive Committee. The successful nominee was Attorney Annie Brown Kennedy.

In 1986, I was a candidate for a seat on the North Carolina Court of Appeals. The selection of the party nominee was made by the North Carolina State Democratic Executive Committee. The eventual nominee was Judge Eddie Greene who was elected to that position in the 1986 general election.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as a clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

I have not served as a clerk to a Judge.

2. whether you practiced alone, and if so, the addresses and dates;

I practiced alone for a brief period from January 1978 until December 31, 1979. My office was located at 1304 Wachovia Building, Winston-Salem, North Carolina. Attorney Billy D. Friende, Jr. moved into my office in June 1978. He shared expenses of the office with me until we became partners as of January 1, 1980.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1974-1977-Associate with Richard C. Erwin, Attorney at Law, 1223 Wachovia Building Winston-Salem, N. C..

1977-1978-Partner, Erwin and Beaty, Attorneys at Law, 1304 Wachovia Building, Winston-Salem, N. C..

1980-1981-Partner, Beaty and Friende, Attorneys at Law (Billy D. Friende, Jr, Partner) 1304 Wachovia Building, Winston-Salem, N. C., and subsequently located at the new address of 548 N. Main Street, Winston-Salem, North Carolina. Beaty and Friende, Attorneys at Law with a second office at 710 Parker Avenue, Lexington, N. C.



## 1981-Present-Forsyth County Superior Court Judge.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I was engaged in a general practice of law. I did a considerable amount of criminal work in both District and Superior Court. I also performed general practice matters such as real estate closings and probating estate cases. My trials in Superior Court were primarily criminal cases. I also represented clients in criminal and bankruptcy matters in Federal Court.

As a trial court judge over the last twelve years, I have almost exclusively been involved in the trial of criminal and civil cases. During the first seven years, I traveled extensively throughout the State of North Carolina on special assignment for cases of great notoriety and sensitivity because the involvement of public officials on various occasions. I was frequently assigned to conduct trials of capital cases that were highly publicized.

As a Resident Judge, I have presided over complex and technical civil disputes, including, but not limited to, professional malpractice litigations.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

I did not specialize in any particular field because of the general nature of the practice. My typical client would have been the average citizen who needed some assistance in understanding the legal issues involved in personal or business affairs.

More specifically, my clients included individuals charged with criminal and traffic cases, in both District and Superior Court. In addition, I represented a number of churches and funeral homes with various legal matters.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearance in court varied, describe each such variance, giving dates.

I appeared in court on a frequent basis in criminal matters, and on an occasional basis in civil matters for clients with business interests.

2. What percentage of these appearances was:  
(a) federal courts:

20 percent.

(b) state courts of record:

65 percent.

(c) other courts:

15 percent.

3. What percentage of your litigation was:  
(a) civil:

25 percent.

(b) criminal:

75 percent.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

This is rather difficult to determine over the course of the seven years that I was in private practice before becoming a trial judge. However, I would estimate that as sole counsel, I tried 30

or 40 cases; and that I was associated with someone in approximately 5 or 10 cases during any particular time.

As a trial judge for the last twelve years, the cases I have tried would number in the hundreds.

5. What percentage of these trials was:

(a) jury:

30 percent.

(b) non-jury:

70 percent.

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) The individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The following cases are the ones that I can specifically recall that involved court appearances. However, I am sure that my trial experience varied over different times because of the general nature of my practice of law and community involvement.

1. --State v. Hackett, December 1974, 74 CRS 2711: This was a 1974 Jackson County jury trial in which my client, David Hackett, a Western Carolina University student, was accused of the sale of and possession with intent to sell marijuana. The incident was alleged to have occurred during the school year in May, 1974. The defendant was not indicted or brought to trial until December, 1974. Mr. Hackett's contention was that he was denied due process of law under the Fifth Amendment to the United States Constitution, as made applicable to the States under the Fourteenth Amendment, and that he was prejudiced by the delay between the alleged date of the

offense and the indictment and trial. At the trial, there was a substantial conflict in the testimony between the state's principal witness and Mr. Hackett. The defendant offered evidence of a personal conflict between the defendant and the state's witness who had indicated that he would get even with Mr. Hackett. The jury found Mr. Hackett guilty of the sell of marijuana charge. The conviction was affirmed on appeal as is reported in 215 SE.2d 832(N.C. 75). The Presiding Judge was Lacy Thornburg whose telephone number is 704-251-6083. The District Attorney prosecuting the case was John Snow, 102 Van Horn Street, Murphy, North Carolina; the telephone number is 704-837-5052.

2. --Sawyer v. Cox: I represented the plaintiff in this medical negligence case in 1976. The defendant, a dermatologist had administered medication to my client for psoriasis which had caused his kidneys to fail. After the civil action for damages was filed and properly served on the defendant, he failed to answer the pleadings or otherwise appear to defend the case. I obtained an entry of default, and thereafter, set the matter on for default inquiry and judgment. Even though the defendant had not made an official appearance in the case, I provided him with adequate notice of the hearing on the request for a judgment against him. The defendant, acting pro se, failed to make an appearance at the hearing. A default judgment in the amount of \$354,000 was entered against the defendant. Dr. Cox hired an attorney and moved to have the default judgment set aside. His motion was denied, and the case was appealed. The judgment was affirmed in the North Carolina Court of Appeals, but the North Carolina Supreme Court remanded the matter for a new hearing. The Trial Court, again, denied Dr. Cox's motion to set aside the default judgment. The trial judges appearing in the case were, Judge Robert Collier of Statesville, North Carolina, telephone number:704-878-4216, and Judge Hal Walker, now deceased. The attorney for the defendant was Robert Wilson, Suite 650, 8 West 3rd. Street, Winston-Salem, North Carolina 27101, telephone number:910-722-0333.
3. --Sawyer v. Cox: After obtaining the \$354,000 judgment against Dr. Cox, I attempted to execute on it by initiating a civil partition proceeding as a judgment creditor pursuant to State law. I had discovered that Dr. Cox had jointly with his former wife owned real estate in an adjoining county. Dr. Cox, through counsel, attempted to defend the action by suggesting that he was solely seized of the property, and that his wife had no interest in the property. This was not a defense to the partition proceeding, but rather was a defense to his wife joining in the case claiming an interest in the property. Notwithstanding this argument, I was able to obtain an court ordered judicial sale in order that my client could execute on his judgment. The judgment of the Court was appealed by Dr. Cox, but the trial court was affirmed as to the ordering of a judicial sale. Dr. Cox subsequently declared personal bankruptcy. His property was sold by the bankruptcy trustee who paid a portion of the proceeds to partially satisfy my client's judgment. The trial judge was Hal Walker who is now deceased. The attorney for the defendant was Robert Wilson, Suite 650, 8 West 3rd. Street, Winston-

Salem, North Carolina 27101; telephone number:910-722-0333.

4. --State v. Leggett, 80 CRS 15667, 15669: In 1980, I represented Mr. Leggett in a jury trial on the charges of first degree rape and first degree burglary. The State's witness indicated that Mr. Leggett broke into her apartment at night, and forcibly raped her. At trial, she could not provide an adequate description of her attacker. The defendant, however, presented substantial alibi testimony for his whereabouts on the evening of the alleged offense. The jury found the defendant not guilty of first degree rape, but they were unable to reach a unanimous verdict on the burglary charge. The burglary charge was later dismissed. The trial judge was Robert Collier of Statesville, North Carolina, telephone number:704-251-6083. The District Attorney was Howard Cole of P.O. Box 2378, Greensboro, North Carolina; telephone number:910-574-4313.
5. --Alice Brown v. Robert Brown, 75 CVS 3037: Mrs. Alice Brown initially appeared in this matter pro se. As a result, she failed to timely pursue her case, and an entry of default was entered against her. My law firm was hired to represent her in a motion to set aside the entry of default which I presented to the Court. The trial judge denied our motion on the basis that our client failed to show evidence of excusable neglect and a meritorious defense. We appealed the denial of the motion contending that the trial judge had applied the wrong standard for determining whether an entry of default should be set aside. It was our contention that the plaintiff only had to show a good cause reason in order to have the entry of default set aside. The good cause in this instance was the fact that Mrs. Brown was unable to adequately attend to her personal affairs. The North Carolina Court of Appeals found that we had made a showing of good cause, and reversed the denial of our motion to set aside the entry of default. The Trial Judge was Walter Crissman, telephone number:910-887-3544. The defendant's attorney was Greg Schiro, 846 West 4th Street, Winston-Salem, North Carolina 27101; the telephone number:910-727-1291.
6. --State v. Joe Floyd Medley: In this 1975 case, my client, Mr. Medley, was charged with the felony of Armed Robbery along with codefendants. Mr. Medley pled not guilty and requested a jury trial. The State's witnesses had some difficulty in identifying all of the parties involved. For this reason, the State offered my client a chance to receive an active sentence of seven years which was substantially less than the mandatory minimum sentence of 14 years in exchange for his testimony against the other defendants. My client accepted the offer, and received the reduced sentence upon testifying against the codefendants in the case. The trial judge was Judge John McConnell, now retired, telephone:910-295-2205. The District Attorney was Richard Panosh of P.O. Box 2378, Greensboro, North Carolina;telephone number:910-574-4314.
7. --State v. Charles Worthy, 77 CR 11246, Davidson County: I represented Mr. Worthy in a 1977 drug case in which he was charged with selling a controlled substance to a confidential informant. On his behalf, I filed a motion to have the identity of the informant



disclosed. The basis of the motion was that the indictment against my client alleged that the informant participated in the sale of the drugs. My client was familiar with the identity and past criminal history of the informant. The District Attorney was also familiar with the background of the informant. He did not wish to proceed to trial with the informant as his principal witness. The District Attorney did not resist my motion to have the identity of the confidential informant disclosed. The District Attorney later dismissed the charge against my client. The trial judge was Fetzer Mills, telephone:704-694-4344. The District Attorney was H.W. Zimmerman of P.O. Box 1411, Lexington, N.C. 27292; telephone number:704-249-0373.

8. --State v. Lester Davidson, 78 CRS 10645: This case involved a criminal charge of non-support against my client, Lester Davidson. One of the underlying issues was a question of paternity, which my client denied. I had represented Mr. Davidson in District Court on this same matter, and the District Court Judge found my client not guilty of the charge of non-support without making a specific finding as to the question of paternity. The District Attorney, thereafter, indicted my client for the same offense. Mr. Davidson plead not guilty and a jury trial was held. At the trial, it was my client's contention that another man, dating the prosecuting witness at the same time, was the father of the minor child involved in this case. This person was in the local jail on an un-related charge. In order to combat my client's contentions regarding paternity, the District Attorney brought the other named individual into the courtroom for the jury to make a physical comparison between the two men and the approximately two year old minor child. The jury found my client to be the father of the child and guilty of non-support of the child. The trial judge was Harvey Lupton, telephone:910-761-2420. The District Attorney was Howard Cole of P.O. Box 2378, Greensboro, North Carolina; telephone number:910-574-4313. This was a 1978 case.
9. --George Gaddy v. Thomas Hinton, 77 CVS 2132: In 1976, the plaintiff and the defendants entered into an installment land contract for the purchase of real estate. The plaintiff did not receive a deed for the property. The plaintiff took possession of the property, and made payments to the defendants. At some point, the plaintiff fell behind in his payments, and the defendant brought a summary ejectment proceeding to have the plaintiff removed from the house for his failure to make the payments under the contract. The summary ejectment proceeding was dismissed by the magistrate court. The plaintiff continued to withhold payments under the contract and demanded a warranty deed for the property. The defendants offered the plaintiff a deed subject to his assumption of an existing deed of trust on the property. The defendants represented themselves during these proceeding prior to trial. The plaintiff rejected the arrangement offered by the defendants and filed this civil action for specific performance of the installment land sale contract.

I represented the defendants at trial. The jury was submitted the issues of whether there was a contract for the sale of the property between the plaintiff and the defendants, and whether or not there

had been a breach of the contract. The jury returned a verdict finding the existence of a contract, but also found that the plaintiff and not the defendant had breached the contract. My clients, the defendants, were able to keep their real estate and all of the money paid by the plaintiff under the contract up to the time of the breach by the plaintiff. The trial judge was Abner Alexander, telephone: 910-765-5981. The attorney for the plaintiff was George Cleland, 119 Brookstown Ave., One Salem Tower, Winston-Salem, North Carolina 27101; telephone number: 910-725-0234.

10. --Carl Russell, United States Middle District Court, CR 79-176-01-G: In 1979, I represented Mr. Carl Russell, a former local government official who had been indicted in Federal Court for failure to file and pay both Federal and State Income taxes for over fifteen years. Mr. Russell did not have an acceptable defense to this charge. However, I was able to negotiate a plea bargain which provided that Mr. Russell would plea guilty to the charges, agree to a schedule of repayment of his taxes, pay a fine of \$10,000, and serve six months in a Federal prison unit. United States District Court Judge Eugene Gordon, now on senior status, accepted the plea and sentenced Mr. Russell according to the agreed upon terms. Mr. Russell, after beginning his active sentence, developed serious health problems. I made a motion before Judge Gordon requesting a reduction of Mr. Russell's active sentence. Judge Gordon allowed the motion after Mr. Russell had served four months of the active sentence because of Mr. Russell's failing health. My best recollection is that Mr. David Smith of the United States Attorney's office prosecuted this case. The address for the United States Attorney is P. O. Box 1858, Greensboro, North Carolina; telephone number: 910-333-5351.

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My trial experience has been in all aspects of both criminal and civil jurisdiction throughout more than 75 of the 100 counties in the state of North Carolina in which I have appeared over the last twelve years.

I have served as an officer in various professional organizations such as the North Carolina Association of Black Lawyers and the Superior Court Judges Conference. I have also served on Chief Justice Exum's Liaison Committee, and the initial Judicial Conference Committee.

I currently serve as a member of the North Carolina Bar Association's Committee on Race Relations in the Legal Profession as a member of the implementation committee.

I also regularly participate in various seminars sponsored by the professional organizations. These have included "Handling Publicity

in High Profile Cases", "The Use of Computers By Judges" sponsored by the North Carolina Superior Court Judges Conference; "Practical Trial Tips From The Bench To The Bar", sponsored by the North Carolina Association of Black Lawyers; "Homicide Defense/Prosecution Overview and Jury Selection"(Copies of My January 29, 1993 Presentation are included in response to question twelve(12)), and "A Demonstration of The Use of Expert Testimony" sponsored by the North Carolina Bar Association.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stocks, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

As of September 10, 1992, I have terminated all prior association with my former partnership arrangements with Billy D. Friende. At the end of 1981, I had a remaining interest in the physical assets of the law partnership of Beaty and Friende Attorneys which had a value of \$6000. I also owned one half interest of the office building located at 548 N. Main Street, Winston-Salem, N. C. which was operated under the partnership name of J & B Income Properties. An annual tax return was filed under this name indicating income and expenses, however I never received any actual funds other than the benefit of losses or income that were derived from the operation of the partnership of J & B Income Properties. However, both interest were sold to Mr. Friende on September 10, 1992 and the proceeds are reflected in my 1992 tax returns.

As a part of my employment with the State of North Carolina, I have contributed regularly six percent of my salary to the Judicial Retirement Plan in which I became vested as of my fifth year of employment. Based upon the law of North Carolina, I am not able to receive any payments under that plan until I become eligible to receive benefits under the Federal retirement system. I may have to receive a return of my contributions upon termination of employment with the State of North Carolina.

In addition, I have contributed regularly to a 457 Deferred Compensation Plan and a 401(k) Plan which are available to State employees. Again, I would not be able to contribute to these plans upon the termination of employment with the State. However, I would have the option to leave the assets with the plan or to receive a return of my contribution.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will follow the appropriate ethics requirements and the Code of Judicial Conduct.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

A copy of the Financial Disclosure Report, AO-10 is attached hereto.

5. Please complete the attached financial net worth statement in detail (Add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

Yes. In 1980, I was the Forsyth County Co-Chairman for the Jim Hunt for Governor (of North Carolina) campaign. I was generally responsible for representing the Governor at all political functions in the County. In addition, I was in charge of the Get-Out-The-Vote Campaign in the primary and general elections during the 1980 election year.



## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As a judge, I am unable to engage in traditional pro bono activities, but I have participated in a variety of other community services.

My interest has primarily centered around helping young people get the best out of life that they possibly can. It is my firm belief that unless we reach the troubled young people at an early stage of their lives, then the continuing problems of our society will never cease. In that regard, I served on various boards, as described herein, that focus on disadvantaged youths. Beyond just serving on boards, I have worked with an individual youth as a Partner at his school where I spent a hour a week meeting with him to discuss his school and home problems.

During the years 1991-1992 I coached Pop Warner football for young men that were primarily from disadvantaged homes. This required a commitment of time from August to November during the season with two to three practices and an all day commitment on Saturday game days. This involved not only coaching, but spending some time to get to know the individual young men and their personal conditions of life.

I have also served as an Assistant Scoutmaster trying to keep young men between the ages of 10 to 18 focused on a constructive goal often in competition with the many distractions for boys that age. This involves a weekly meeting and a week at camp at some point during the summer months.

As a judge, I take every opportunity to spend some time with students when they come to court for visits in order to emphasize that it is better for them to see me in that setting than as a violator of the law.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies?

I am not presently, nor have I ever been, a member of an organization that invidiously discriminates on the basis of race, sex, or religion. I am a member of the Bachelor-Benedict Club which is a male social club that meets once a month from September through June of each year. A copy of the by-laws is attached in response to question number ten(10).

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and interviews in which you participated).

There is not an official selection commission for recommending candidates for nomination to the federal bench in the State of North Carolina. Since North Carolina has two Republican Senators, the North Carolina Democratic Congressional Delegation under the lead of its senior member, Congressman Charlie Rose along with Governor Jim Hunt, and President Clinton's campaign team agreed among themselves as to the recommendation procedure. Once the procedure was established, it is my understanding that they agreed upon the names of the various people to be passed on to the President for consideration. My name was among the names presented to President Clinton for consideration as a nominee for the position of U. S. District Court Judge for the Middle District of North Carolina.

The selection team did not conduct any personal interview of the persons interested in this position. However, my initial involvement focused on contacting the various members of the team making the recommendation to the President, and also soliciting the assistance of others to contact these same person on my behalf.

Since I was informed that my name was included among the finalist for the Middle District Court seat, I have been involved in a number of interviews. Beginning in August, 1993, and continuing to the present time, I have participated in phone interviews with various representatives of the Justice Department. In October, 1993, I participated in a personal interview with representatives of the Justice Department in Washington, D.C..

Once I was tentatively cleared by the White House, I have participated in interviews with representatives of the Federal Bureau of Investigation and the American Bar Association.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue of question in a manner that could reasonably be interpreted as asking how you would rule on such case, issue, or question? If so, please explain fully.

No.

5. Please discuss your view on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years.

It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government.

Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem solving rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

I believe that since the Federal Judiciary has the primary function of interpreting the language of the Constitution, it should not go beyond its role as envisioned by the Constitution itself. I respect the authority of the other branches of government to govern according to the language of the Constitution. It is only when a case or controversy raises an issue that one of the other branches of government has failed to reasonably adhere to Constitutional principles that the Federal Judiciary should become involved by a decision of the appropriate court with a reminder of what the framers of the Constitution had in mind or intended their respective roles to be. The basis for this reminder by the Court should also find its roots in the language of the Constitution, and any other relevant rulings made by the United States Supreme Court and other lower Federal Courts.

## FINANCIAL STATEMENT

## NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including bank accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debts, mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	10,000		Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	22,400		Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	55,000	
Real estate owned—add schedule	117,000		Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	75,000		Credit Card Accounts	4,200	
Cash value—life insurance	28,000				
Other assets—itemize:					
Wachovia Bank Brokerage IRA	15,000				
State 457 Deferred Compensation	52,000				
State Retirement Plan	60,000		Total Liabilities	59,200	
State 401K Plan	12,000		Net Worth	372,200	
NationsBank Retirement Plan	40,000		Total liabilities and net worth	431,400	
Total Assets	431,400				
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	None		Are any assets pledged? (Add schedule.)	No	
On leases or contracts	None		Are you defendant in any suits or legal actions?	No	
Legal Claims	None		Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax	Paid				
Other special debt	None				

## SCHEDULE OF ASSETS AND LIABILITIES

ASSETS

Listed Securities:	
200 shares NationsBank	\$ 12,000
75 shares Duke Power	2,700
200 shares RJ Reynolds	1,300
25 shares Lance Co.	400
US Savings Bonds	6,000
(Purchase Value)	
<hr/>	
Total	\$ 22,400
Real Estate	
325 Mayfair Drive	\$ 99,000
(Principal Residence)	
2.5 acres - vacant lot	15,000
.6 acre - vacant lot	3,000
<hr/>	
Total	\$117,000

LIABILITIES

Real Estate Mortgage:	
Wachovia Bank and Trust	\$ 55,000
Credit Card Accounts	
MasterCard	2,500
America Express	1,400
Visa	300
<hr/>	
Total	\$ 59,200



AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989.  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial)  BEATY, JR. JAMES A.	2. Court or Organization  UNITED STATES DISTRICT COURT	3. Date of Report  8/26/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)  Article III Judge Nominee	5. Report Type (check appropriate type) <u>X</u> Nomination, Date <u>8/25/94</u> ___ Initial ___ Annual ___ Final	6. Reporting Period January 1, 1994 - August 25, 1994
7. Chambers or Office Address 200 N. Main Street Winston-Salem, NC 27101	8. On the basis of the information contained in this report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reviewing Officer Signature _____	

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY
☒ NONE (No reportable positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS
☒ NONE (No reportable agreements)

But see further explanation at VIII

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE  
(Honoraria only)SOURCE AND TYPEGROSS INCOME  
(yours, not spouse's)
☐ NONE (No reportable non-investment income)

1	State of North Carolina - Salary	\$ 102,000
2	(S) NationsBank of North Carolina, N.A.	\$
3		\$
4		\$
5		\$

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

Date of Report

JAMES A. BEATY, JR.

8/26/94

## IV. REIMBURSEMENTS and GIFTS – transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

☐

NONE (No such reportable reimbursements or gifts)

1

State of North Carolina

Reimbursement for monthly automobile mileage

2

3

4

5

6

7

8

## V. OTHER GIFTS. (Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

☒

NONE (No such reportable gifts)

1

\$

2

\$

3

\$

4

\$

## VI. LIABILITIES. (Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less K = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 N = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

Name of Person Reporting

Date of Report

## FINANCIAL DISCLOSURE REPORT (cont'd)

JAMES A. BEATY, JR.

8/26/94

VII. INVESTMENTS and TRUSTS – income, value, transactions. (Includes those of spouse and dependent children; see pp. 18-27 of Instructions.)

[illegible]

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

JAMES A. BEATY, JR.

Date of Report

8/26/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

II. Agreements - I do not have any reportable agreements, however, I am presently

enrolled in three benefit plans through my current employer, the State of North Carolina.

I do not intend nor am I allowed to make further contributions, but the funds may remain

in the three separate accounts until I can determine what proper disposition may be made

with them. These include a 401K Plan (Value J), 457 Deferred Compensation Plan (Value L)

and a Judicial Retirement Plan (Value L).

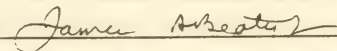
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

8/26/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544

QUESTIONNAIRE FOR JUDICIAL NOMINEES

## I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used).

DAVID BRIONES

2. Address: List current place of residence and office address(es).

HOME ADDRESS: 3301 Morehead  
El Paso, Texas 79930

OFFICE ADDRESS: 802 County Courthouse  
500 E. San Antonio  
El Paso, Texas 79901

3. Date and place of birth.

February 26, 1943  
El Paso, El Paso County, Texas

4. Marital status (include maiden name of wife, or husband's name.) List spouse's occupation, employer's name and business address(es).

MARRIED: DELIA BRIONES (maiden name GARCIA)  
OCCUPATION: Housewife and occasionally substitutes  
as part-time employee as a clerk or  
secretary with the El Paso Independent  
School District:  
Austin High School  
3500 Memphis  
El Paso, Texas 79930  
(915) 562-7611

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Texas Western College, El Paso, Texas, attended from  
September 1961 to January 1963; majored in Business  
Administration; did not receive a degree.

Santa Monica City College, Santa Monica, California;  
attended from September 1963 to January 1964; part-  
time; general studies; did not receive a degree.

Texarkana City College, Texarkana, Texas; attended  
from January 1966 to July 1966; part-time; general  
studies; did not receive a degree.



University of Texas at El Paso (formerly Texas Western College, El Paso, Texas; attended from September 1966 to January 1966; September 1967 to January 1969; awarded Bachelor of Arts Degree in Political Science in January 1969.

University of Texas at Austin, Austin, Texas; attended from January 1967 to May 1967; part-time; majored in government; did not receive a degree.

University of Texas School of Law, Austin, Texas; June 1969 to August 1971; awarded Doctor of Jurisprudence degree in August 1971.

6. **Employment Record:** List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

January 1969 to May 1969, The State of Texas, legislative aide to Paul C. Moreno, Member of the Texas House of Representatives, Austin, Texas.

September 1971 to November 1991, partner in the law firm of MORENO & BRIONES, Attorneys at Law, 2314 Montana, El Paso, Texas 79903.

November 1991 to present, Judge, County Court at Law Number One, El Paso County, Texas, Room 802 County Courthouse, 500 E. San Antonio, El Paso, Texas 79901.

7. **Military Service:** Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

Yes, I have had military service. I was on active duty with the United States Army from September 1964 to September 1966, with the rank of E-4, service number US19800057. I then served in the United States Army Reserve from my release from active duty to March 1970. I received an honorable discharge on March 16th, 1970.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Mexican-American Legal Defense and Education Fund Scholarship to law school, June 1969 to August 1971.

State Judicial Institute Grant to attend the National Judicial College, Reno, Nevada, Advanced Evidence Course, August 1, 1993 to August 6, 1993.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

State Bar of Texas, September 1991 to present.

State Bar of Texas, Judicial Section, November 1991 to present.

El Paso Bar Association, 1980 to present.

Mexican-American Bar Association of El Paso, Texas, 1978 to present. I served on the Board of Directors from 1980 to 1982. I served as vice president in 1981; and president in 1982.

Mexican-American Bar Association of Texas, 1986 to present.

Member, El Paso County Council of Judges, November 1991 to present (serving on the Court Interpreters Committee and Local Rules Committee.)

Member, Sixth Judicial Administrative District, November 1991 to present (serving on the Education Committee.)

Fellow, Texas Bar Foundation, March 1993 to present.

Member, Texas Association of County Court at Law Judges, March 1992 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Heart Association, El Paso Board of Directors, 1992 to present.

Mexican-American Democrats, Paso Del Norte Chapter, 1978 to present.

Parents, Teachers and Students Association (PTSA), 1993 to present.

11. Court Admissions: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such membership lapsed. Please explain the reason

for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of Texas, September 1971 to present.

United States District Court for the Western District of Texas, July 1973 to present.

United States Fifth Circuit Court of Appeals, New Orleans, Louisiana, November 1990 to present.

12. Published Writings: List the titles the books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

I am submitting herewith a copy of an article on Pretrial Discovery. This article was presented to the 1992 Annual Mexican-American Bar Association of Texas Conference, September 10, 11, and 12, 1992. The only portion of the article printed in the conference handout was the List of Authorities. The remainder of the article was presented orally to the participants.

13. Health: What is the present state of your health? List the date of your last physical examination.

The state of my health is excellent. My last physical examination was on September 15, 1993.

14. Judicial Office: State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

I am presently judge of County Court at Law Number One of El Paso County, Texas and this is the only judicial office I have ever held. I was appointed to the bench on November 13, 1991 by the Commissioner's Court of El Paso County, Texas to fill a vacancy on the Court. I was nominated in the Democratic Primary in March of 1992 and elected in the General Election of November 3, 1992.

As judge of County Court at Law Number One, I hear both civil and criminal cases. In civil cases, I exercise jurisdiction concurrent with the State District Court in all cases in which the matter in

controversy exceeds \$500.00, but may not hear any civil matter involving a contested election. I also exercise jurisdiction over all general domestic relations matters. I have limited jurisdiction in criminal cases as I only hear Class "A" and Class "B" misdemeanors. I am also a member of the Council of Judges of El Paso County and as such, take part in formulating rules and regulations for the use of the courthouse and for the administration of justice in El Paso County.

15. Citations: If you are or have been a judge, provide (1) citations for the ten most significant opinions you have written; (2) a short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings; and (3) citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, please provide copies of the opinions.

(1) Citations for the ten most significant opinions you have written.

County Court at Law Number One is a trial court and as such, we do not ordinarily issue written opinions. We issue judgments finalizing cases after trial before the court or a jury and we issue orders based on rulings from the bench. During my tenure as judge of my court, I have not had an opportunity to issue a written an opinion.

(2) A short summary of and citations for all appellate opinions where your decisions were reversed or where your judgment was affirmed with significant criticism of your substantive or procedural rulings.

**Trinity Capital Corporation vs. The Hon. David Briones** is an original proceeding in mandamus. The Eighth Court of Appeals conditionally granted the writ after concluding that my granting a new trial was an abuse of discretion. Trinity, a California corporation had obtained judgment against some Texas residents in a California court and was attempting to register the judgment for execution in Texas. The Texas residents filed for a new trial alleging that Trinity had violated Texas' usury laws and had failed to comply with certain notice provisions in the contract. Application for writ of mandamus is very common in this type of situation because it is the proper remedy for the unsuccessful party at the



trial court to seek review from the appellate court. This case was reported at 847 S.W.2d 324 (1993). Note that in the case summarized below, Martha Ornelas and Samuel Ornelas vs. The Hon. David Briones, I did give full, faith and credit to an out-of-state judgment and the court of appeals refused the application for Writ of Mandamus.

Joseph S. Fandey and Edith D. Fandey vs. The Hon. David Briones (1993) is also a mandamus proceeding. This case involves an order that was presented to me for my signature. The attorney misrepresented the contents and I signed the order relying on his representations. When I became aware of mistake, I marked through the order and retained it in an attempt to revoke the order. I fully agree with the court of appeals that such action on my part was an abuse of discretion and I should have revoked the order by vacating the order and entering a proper order. This decision was not published so I have enclosed a copy of the opinion together with a copy of an affidavit filed with the court of appeals outlining my actions.

I have enclosed a copy of the court of appeals' decision in Texas Department of Public Safety vs. Luis Estrada (1993). The court of appeals overturned my granting of an instructed verdict in a suit to suspend the Appellee's driver's license. The court ruled that the Department was not required to prove that Estrada was a resident of El Paso County; that Montana Street in El Paso was a public highway and that the Texas Department of Public Safety was a state agency. This opinion was not published.

Texas Department of Public Safety vs. David Alton Kelton is also an appeal from a drivers license suspension from the Justice of the Peace Court because the Department was the prevailing party in such court and I ruled that it had no right to appeal. The court of appeals decided that at common law, a prevailing party had no right to review; however, here the statute provided any party with the right to review. This case was reported at 876 S.W.2d 450 (1994).

In Associated General Contractors of Texas, Inc. and Ramon Ortega, An Individual vs. The City of El Paso, Plaintiffs sought an injunction an a declaratory judgment prohibiting the City of El Paso from entering into construction contracts with a certain prevailing wage rate established by the City Council. I dismissed the lawsuit against the City



for want of jurisdiction. The court of appeals ruled that although the trial court did not possess power to direct a specific method of performing a required act, the trial court did have subject matter jurisdiction to determine whether the City followed the statute in adopting the prevailing wage rate. This decision was published at 879 S.W.2d 318 (1994).

**Joanne Vida vs. El Paso Employee's Federal Credit Union (1994)**, was a wrongful termination of employment suit. Plaintiff claimed she was discharged in retaliation for using the employer's internal grievance procedures. I granted the employer's Motion for Summary Judgment which argued that the personnel policy manual could not constitute a contract limiting the employer's right to discharge an employee. The court of appeals ruled that the specific provisions of the manual pledging that no employee would be penalized for using the grievance procedure altered the at-will relationship of the parties. This decision has not yet been published so a copy of the decision is attached.

These are the only opinions issued which reversed my decisions or that contained any criticism of my rulings.

(3) Citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinion. If any of the opinions listed were not officially reported, please provide copies of the opinions.

The only opinions issued regarding any constitutional issue have been referred to in answer to the previous question. Both cases involved the United States Constitution provision in Article IV, Section 1 that "[f]ull Faith and Credit shall be given in each State to public Acts, Records, and judicial Proceedings in every other State."

In **Trinity Capital Corporation vs. The Hon. David Briones**, 847 S.W.2d 324 (1993), discussed above, the Writ of Mandamus was conditionally granted, directing me to give full faith and credit to the judgment out of the California court.

In **Martha Ornelas and Samuel Ornelas vs. The Hon. David Briones (1994)**, the court of appeals denied leave to file the Application for Writ of Mandamus because the Relators failed to show that they had no other clear remedy at law. At the trial level, I

issued a stay in a medical malpractice suit because the physician's insurance carrier was in receivership and an order issued by a Louisiana court stayed all legal proceedings against the insurance company and included all litigation involving the adjudication of liability of any policyholder. This opinion has not yet been published. A copy is provided herein.

16. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

The only other public office I have held is Precinct Chair, Precinct No. 35, El Paso County Democratic Party, having been appointed in 1988 and having been elected to that position in 1990. I resigned as Precinct Chair shortly after being appointed to my position as judge of County Court at Law Number One on November 13, 1991.

I was an unsuccessful candidate for the office of Judge, Municipal Court, City of El Paso, Texas, in the election held in March of 1980.

17. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. Whether you served as clerk to a judge, and if so, the name of judge, the court, and the dates of the period you were a clerk.

I did not serve as a clerk to a judge.

2. Whether you practiced alone, and if so, the addresses and dates.

I did not practice alone.

3. The dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each.

From September 10, 1971 (the date I was licensed to practice law) to November 13, 1991 (the date I was sworn in as judge) I was in a partnership with Paul C. Moreno in the general practice of

law. The firm was Moreno & Briones, Attorneys at Law together with Paul C. Moreno. We were located at 2314 Montana, El Paso, Texas 79903 (915) 533-8767.

- b. 1. What has been the general character of your law practice, dividing it into period with dates if its character was changed over the years?

Our practice was the general practice of law, both civil and criminal. We primarily served towards individuals and generally we did not represent businesses except for some family held small corporations, small partnerships or sole proprietors.

In civil matters, our clients were mostly people who had been involved in accidents, either on the job or off the job. We were also involved in the practice of probate law, which consisted of preparation of wills, and representation of estates or individuals having matters before the Probate Court. We also did a considerable amount of real estate practice, such as preparation of deeds and other closing documents. In criminal matters, we were involved in everything from traffic tickets to murder cases. We generally did not handle any appellate work, or immigration or bankruptcy matters. Throughout our partnership, the character of our practice did not change.

2. Describe your typical former clients, and mention the areas, if any, in which you specialized.

Our clients were usually working class individuals who came in for legal advice and representation and could not afford to pay large fees. In injury cases, our fees were usually contingent on some recovery. We did not have any area of specialization.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Throughout my whole practice, I appeared in court on a regular basis.

2. What percentage of these appearances was in:

- (a) Federal courts 15%
- (b) State courts of record 80%
- (c) Other courts 5%

3. What percentage of your litigation was:

- (a) Civil 70%
- (b) Criminal 30%

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Over 500 cases, the great majority as sole counsel. In serious criminal cases, I would usually have other counsel with me, but I would be chief counsel.

5. What percentage of these trials was:

- (a) Jury 20%
- (b) Non-Jury 80%

18. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representation;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of the co-counsel and of principal counsel for each of the other parties.

Case No. ONE

Significant litigated matter:

a. Style.

The State of Texas vs. Robert Mitchell

b. Docket No.

50568-168

c. Citation and date.

N/A

d. Capsule summary.

The Defendant was charged with murder. The Defendant, the victim and a group of people had been having an all-night drinking party. The Defendant and the victim got into a fistfight sometime during the night but the trouble between them continued throughout the night. As the victim and his female companion were driving off in the early morning hours, another person handed the Defendant a gun and the Defendant fired all the rounds toward the car, striking the victim twice, one of which was to the head and proved fatal. The Defendant claimed self-defense, claiming that the victim was driving towards him, trying to strike him.

This case was very difficult because of the facts and because most witnesses, including the victim's female companion, testified against the Defendant. The District Attorney in office at the time, Steve Simmons, did not plea bargain. In every criminal case the probation department would prepare a pre-plea report which would contain a recommended sentence to the court. If a Defendant pled guilty before the court, the judge could not issue a longer sentence than the recommended sentence without giving the Defendant an opportunity to withdraw his plea. In this case, the recommended plea was 30 years confinement.

e. Party represented.

Defendant, Robert Mitchell.



Case No. ONE (continued)

f. Nature of participation.

Represented the Defendant in all preliminary and pre-trial motions. Lead counsel for the Defendant at trial.

g. Final disposition.

Defendant found guilty by the jury and jury assessed 20 years confinement.

h. Date of rep.

May 1987 to October 1987.

i. Name of Court and Judge.

168th Judicial District Court.  
Hon. Ward Koehler (now with the Eighth District of Texas Court of Appeals.)

j. Name, address, phone # of all other counsel.

Co-counsel: Paul C. Moreno  
2314 Montana  
El Paso, TX 79903  
(915) 533-8767

Counsel for the State: Marcos Lizarraga  
First Asst. District Attorney  
500 E. San Antonio  
El Paso, TX 79901  
(915) 546-2059

Case No. TWO

Significant litigated matter:

a. Style.

United States of America vs. Jose Enrique Bosch, et al.

b. Docket No.

EP-88-CR-230H.

c. Citation and date.

N/A

d. Capsule summary.

This was a complicated multicount and multiparty criminal action involving 19 defendants in one indictment. All defendants were charged with conspiracy to import, importation, conspiracy to possess and possession of a very large amount of illegal drugs over an extended period of time. This is an example of many of the cases that are filed in the federal court in El Paso. Typically, this case involved the importation, possession and distribution of huge amounts of illegal drugs.

In this case, the Defendant was observed by government agents loading and then driving a rented truck that contained furniture and a large amount of marijuana hidden among the furniture. He was followed by federal agents from El Paso, Texas to New York City. While parked on the street, he was approached by government agents who requested to search the contents of the truck. The Defendant gave his permission to the search and then was arrested when the illegal drugs were detected. Federal agents released the Defendant for fear that his arrest would endanger the ongoing investigation of the other co-conspirators. Months later, he was indicted and eventually arrested when he entered this country from Central America.

Attempts were made to suppress the evidence and all statements made by Defendant on the grounds that the agents that stopped him in New York had made various representations to him which led him to believe that he was not going to be prosecuted. Upon denial of the Motion to Suppress, a plea agreement was entered into with the U.S. Attorney's Office.

Case No. TWO (continued)

e. Party represented.

Defendant, Jose Enrique Bosch.

f. Nature of participation.

Sole counsel for the Defendant throughout all proceedings.

g. Final disposition.

The Defendant was allowed to plead guilty to one count of the Indictment and the Government dismissed all other counts against him. The Government also agreed that his admission would only involve the illegal drugs that he himself transported and not the other amounts involved in the ongoing conspiracy. The Defendant was sentenced to 60 months of federal confinement.

h. Date of rep.

January 1989 to May 1989.

i. Name of Court and Judge.

United States District Court for the Western District Of Texas, El Paso Division. Hon. Harry Lee Hudspeth.

j. Name, address, phone # of all other counsel.

For the Government: Clifford R. Crunk  
U. S. Attorney's Office  
El Paso, TX and  
San Antonio, TX  
(915) 534-6884

For the Defendant, Elias Barrero:

Jesus Hernandez  
6044 Gateway East,  
Suite 400  
El Paso, TX 79925  
(915) 779-8868

For the Defendant, Estanislao Almeida:

Robert Harris  
1009 Montana  
El Paso, Tx 79902  
(915) 545-1657

Case No. TWO (continued)

For the Defendant, Maria Elena Perez:

Doris Sipes  
1011 N. Mesa  
El Paso, TX 79902  
(915) 544-5235

For the Defendant, William Pino:

Richard Mesa  
521 Texas  
El Paso, TX 79901  
(915) 532-1766

For the Defendant, Emil Faraone:

Victor Sizemore  
1300 Country Club  
Santa Teresa, NM  
(505) 589-1616

For the Defendant, Alfredo Ricco, Jr.:

Thomas Hughes  
120 N. Florence  
El Paso, TX 79901  
(915) 532-4984

For the Defendant, Santos M. Hernandez:

John Garcia  
2226 Montana  
El Paso, TX 79903  
(915) 545-2727

For the Defendant, Rigoberto Rosal:

Ray Velarde  
1013 Montana  
El Paso, TX 79901  
(915) 532-6003

For the Defendant, Fernando Estrada:

Jaime Gandara  
550 E. Paisano  
El Paso, TX 79901  
(915) 544-6273

For the Defendant, William McDonnell:

Joseph Hood  
Texas Commerce Bank  
Bldg., 11th Floor  
201 E. Main  
El Paso, TX 79901  
(915) 546-8223

Case No. TWO (continued)

For the Defendant, Jorge Pepe:

Michael Gibson  
521 Texas  
El Paso, TX 79901  
(915) 532-2977

For the Defendant, Jose O. Ramos:

Jim Dallas  
1444 Montana  
El Paso, TX 79902  
(915) 544-2600

For the Defendant, Ima Zaiter:

Antonio Cortez  
6044 Gateway East  
El Paso, TX 79925  
(915) 778-4422

For the Defendant, Ramon Pena:

Bluford Sanders  
2829 Montana  
El Paso, TX 79903  
(915) 562-4156



Case No. THREE

Significant litigated matter:

a. Style.

In The Matter Of Jesus Soltero Hernandez, Jr.

b. Docket No.

8784 (Juvenile Court Docket)

c. Citation and date.

N/A

d. Capsule summary.

The juvenile defendant, age 15, was accused of shooting and killing a family consisting of the mother; father; a boy, age 15; and a young girl, age 7. This was a very bizarre case because the young boy had been the juvenile defendant's best friend. They were so young that they shared each other's toys. The whole family was found shot to death with a shotgun. The police suspected the juvenile defendant because his sneaker prints were found on the bloody floor of the victim's residence. The police never determined a motive for the killings. The juvenile refused to discuss the killings with his family and defense counsel. The only reply he would give was to insist that he was innocent.

The juvenile was represented by us in proceedings to waive juvenile court jurisdiction and certify the juvenile as an adult. To waive jurisdiction, the juvenile court must find that the child is 15 years of age or older; that the child is alleged to have committed a felony; and that after a hearing, the juvenile court determine there is probable cause to charge the child with the offense alleged and because of the seriousness of the offense or background of the child the welfare of the community requires criminal proceedings. We contested the certification on the grounds that the background of the child, as shown by a diagnostic study, social evaluation and full investigation as to the child's circumstances, did not merit certification.

Case No. THREE (continued)

After trial in juvenile court, the juvenile court certified him as an adult. He was then given a probable cause hearing before the district court. When the district court determined probable cause, our representation of the juvenile terminated and he was appointed defense counsel.

e. Party represented.

Juvenile defendant, Jesus Soltero Hernandez, Jr.

f. Nature of participation.

Lead counsel in certification and probable cause hearing.

g. Final disposition.

Juvenile was certified to stand trial as an adult. Different counsel was then appointed to represent him in adult proceedings. He was convicted of murder and sentenced to life imprisonment.

h. Date of rep.

March 11, 1986 to August 12, 1986.

i. Name of Court and Judge.

327th Judicial District Court (Juvenile Court)  
Hon. Enrique Pena (now retired)

j. <sup>f</sup>  
Name, address, phone # of all other counsel.

Co-counsel: Paul C. Moreno  
2314 Montana  
El Paso, TX 79903  
(915) 533-8767

Counsel for the State: Mary Anne Bramblett  
(now Judge, 41st Judicial  
District Court)  
500 E. San Antonio  
El Paso, TX 79901  
(915) 546-2149

Case No. FOUR

Significant litigated matter:

a. Style.

Pedro Gabaldon Delgado vs. El Paso Wholesale Grocers, a Division of Furr's, Inc.

b. Docket No.

EP-78-CA-85

c. Citation and date.

N/A

d. Capsule summary.

This was a discrimination case brought under the Federal Civil Rights Acts. The Plaintiff, an elderly man, claimed that he was discriminated against by his employer because of his age. He claimed that this employer's practice was to employ certain workers, like himself, on a temporary basis, for lengthy periods of time, and that as temporary employees, they were not entitled to full benefits. He had worked as a temporary employee for several years, only to see the company hire other younger employees on a full time basis. When his hours of temporary employment were reduced, he determined to seek a remedy through the courts. We attempted to prove the discrimination by the testimony of the Plaintiff and some of his fellow employees that were subjected to the same kind of treatment. All other employees, except one, that were scheduled to testify refused to testify at trial, making it very difficult for Plaintiff to factually prove his case.

e. Party respresented.

Plaintiff, Pedro Gabaldon Delgado.

f. Nature of participation.

Sole counsel for the Plaintiff throughout all proceedings, including jury trial.

Case No. FOUR (continued)

g. Final disposition.

Trial court withdrew the case from the jury after the close of the evidence by both parties and directed a verdict for the Defendant.

h. Date of rep.

July 1977 to January 1979

i. Name of court and judge.

United States District Court for the Western District of Texas, El Paso Division.

Hon. William S. Sessions (former FBI Director)

j. Name, address, phone # of all other counsel.

Hon. Sam Sparks (now United States District Judge for the Western District of Texas, Austin Division)

Austin, TX

(512) 482-5230

Case No. FIVE

Significant litigated matter:

a. Style.

In The Interest of Melissa Anne Ramirez, Yolanda Morales, Jose Luis Sosa, Daniel Duran and Roxanne Danielle Duran, Children.

b. Docket No.

89-2136

c. Citation and date.

N/A

d. Capsule summary.

This is a termination of parental rights case filed by the State of Texas on behalf of five minor children. The mother was a drug addict who was in county jail awaiting transfer to prison on a felony drug conviction. The youngest child was born during the time the mother was on probation for a drug offense and was born addicted to cocaine. It was determined that the child had suffered permanent brain damage as a result of the mother's drug use during pregnancy. The mother was pregnant with another child at the time of the jury trial on the termination case. This was a very difficult case in view of the fact that the mother's oldest daughter, who had gained custody of the youngest child, testified in favor of termination.

It was also a very difficult case because, in spite of all the evidence the mother knew was going to be used against her, she refused to voluntarily relinquish her rights and insisted on a jury trial. Her only argument against termination was that she loved the children and wanted to continue the parental relationship upon termination of her confinement.

e. Party represented.

Court appointed to represent the mother, Yolanda Sosa Morales, aka Martha Ramirez.



Case No. FIVE (continued)

f. Nature of participation.

Represented the mother in all pre-trial proceedings and jury trial.

g. Final disposition.

Mother's parental rights were terminated by the jury's verdict.

h. Date of rep.

May 12, 1989 to August 24, 1990

i. Name of Court and Judge.

65th Judicial District Court  
Hon. Edward S. Marquez

j. Name, address, phone # of all other counsel.

For the State: D. J. Dalton  
Texas Dept. of Human Services  
Asst. County Attorney  
500 E. San Antonio  
El Paso, TX 79901  
(915) 546-2050

Case No. SIX

Significant litigated matter:

a. Style.

The State of Texas vs. Julio Cesar Escorsa.

b. Docket No.

41214-171

c. Citation and date.

N/A

d. Capsule summary.

The Defendant was charged with a three-count Indictment of aggravated kidnapping, indecency with a child and aggravated sexual assault of a child. The Defendant, who was undocumented, had just crossed the border illegally from Mexico when he came upon a young child playing outside her house, very close to downtown El Paso. He abducted the child and hid with her among some railroad cars until he was apprehended. The Defendant claimed throughout the proceedings that he was Adolf Hitler and insisted that everyone address him as such. Two juries found him incompetent to stand trial. After a two-year period of hospitalization, another jury was enpaneled to determine competency.

The main legal question involved in the competency trial was in regards to the submission of the charge to the jury. It was the State's position that because of the presumption of competency, the burden was on the Defendant to prove incompetency. The argument on behalf of the Defendant was that because he had been declared incompetent before, the presumption of incompetency continues until a jury finds him competent, thus shifting the burden to the State. The Court denied the Defendant's proposed charge and the jury found the Defendant competent to stand trial. After another jury trial on the Indictment, he was found guilty on all counts.

e. Party represented.

Defendant, Julio Cesar Escorsa.

Case No. SIX (continued)

f. Nature of participation.

Represented Defendant in all pre-trial proceedings, three competency trials and trial on Indictment.

g. Final disposition.

Defendant found guilty, sentenced to 30 years confinement.

h. Date of rep.

October 1983 to October 1985.

i. Name of Court and Judge.

171st Judicial District Court.  
Hon. Edwin F. Berliner (Deceased)

j. Name, address, phone # of all other counsel.

For the State: David Rutledge  
(Former Asst. District Attorney)  
1317 Montana  
El Paso, TX 79902  
(915) 533-0504

Case No. SEVEN

Significant litigated matter:

a. Style.

Luis Alfonso Ramos, Jr. vs. Contractor's Equip. Co., Inc.

b. Docket No.

EP-77-CA-191

c. Citation and date.

N/A

d. Capsule summary.

This is a discrimination case where the Plaintiff claimed that his employer had harassed, segregated, classified and discriminated against Spanish surname workers. He specifically claimed that the Defendant deprived him of overtime, training, promotion, and eventually his employment because of his national origin. The Defendant denied that it discriminated against Spanish surname workers and also contested the federal district court's jurisdiction, contending that the federal statute was inapplicable to it because it was not involved in interstate commerce. This case was originally scheduled for trial before a jury, but the Plaintiff later agreed to try it before the court. The court heard the jurisdictional question and ruled against the Defendant. The court went on to hear from four witnesses for the Plaintiff and two witnesses for the Defense.

Judge John Wood, Jr., issued his ruling from the bench before he left El Paso to return to San Antonio. This proved to be the last trial conducted by Judge Wood. He was murdered in San Antonio the following week as he was on his way to the federal courthouse. Judge William S. Sessions signed the judgment.

e. Party represented.

Plaintiff, Luis Alfonso Ramos, Jr.

f. Nature of participation.

Conducted all pre-trial and trial proceedings on behalf Plaintiff.

Case No. SEVEN (continued)

g. Final disposition.

Judgment rendered in favor of the Defendant.

h. Date of rep.

February 1977 to June 1979.

i. Name of Court and Judge.

United States District Court for the Western District of  
Texas, El Paso Division.  
Hon. John Wood, Jr. (Deceased)

j. Name, address, phone # of all other counsel.

For the Defendant: Ralph William Scoggins  
5862 Cromo Dr.  
El Paso, TX 79912  
(915) 584-5554



Case No. EIGHT

Significant litigated matter:

a. Style.

United States of America vs. Isaac Ruben Munoz-Jimenez,  
et al.

b. Docket No.

EP-79-CR-29.

c. Citation and date.

N/A

d. Capsule summary.

The Defendant was accused of conspiracy to encourage and induce the entry into the United States of certain undocumented aliens who were citizens of Mexico and not legally admitted to enter the United States. The Defendant and eleven others were charged with arranging for the aliens to be brought into the United States from Mexico, arranging a place for them to stay and for them to be transported to Colorado. The aliens were eventually apprehended and implicated the Defendant and others. This case is an example of the many cases that are filed in the United States District Court for the Western District of Texas, that involve the entry and transportation of undocumented persons into the United States. These cases usually involve, as here, a large number of undocumented persons who pay certain individuals for arranging their entry into the United States and transportation throughout the United States.

It was alleged that the Defendant was the person that accepted delivery of groups of aliens in Denver, Colorado. All the Defendants that were apprehended, except four, pled guilty. At trial, each Defendant argued a different offense. On behalf of my client, I attempted to show that he was a very minor participant in the activities and that he was motivated by his desire to help the aliens and not by payment for his services.

e. Party represented.

Defendant, Isaac Ruben Munoz-Jimenez

Case No. EIGHT (continued)

f. Nature of participation.

Represented the Defendant in all pre-trial proceedings and in jury trial.

g. Final disposition.

Defendant convicted and sentenced to 27 months in prison.

h. Date of rep.

January 1977 to May 1979.

i. Name of Court and Judge.

United States District Court for the Western District of Texas, El Paso Division  
Hon. William S. Sessions (former FBI Director)

j. Name, address, phone # of all counsel.

For the Government: Richard Mesa  
(former Asst. U. S. Attorney)  
521 Texas Avenue  
El Paso, TX 79901  
(915) 532-1766

For the Defendant, Juan Delgado Alarcon:

Herbert E. Cooper  
(now Judge, County Court At Law #5)  
500 E. San Antonio  
El Paso, TX 79901  
(915) 546-2004

For the Defendant, Imer Arredondo-Morales:

Russell Aboud  
918 E. San Antonio  
El Paso, TX 79901  
(915) 532-5449

For the Defendant, Elva Marin-Alarcon:

Daniel Anchondo  
2500 Montana  
El Paso, TX 79903  
(915) 533-1100

Case No. NINE

Significant litigated matter:

a. Style.

In the Matter of the Estate of Josefina G. Esquivel,  
Deceased.

b. Docket No.

36128-5 (County Court at Law No. Five)  
08-86-00172CV (8th Court of Appeals).

c. Citation and date.

N/A

d. Capsule summary.

This was a declaratory judgment action involving the interpretation of a will. The decedent was a lady who purportedly had executed a will, leaving her principal place of residence to her housekeeper of many years and the housekeeper's daughter. The Executrix, who was the decedent's sister, contested the poorly written will claiming that certain portions of it were ambiguous. The trial court determined that the will was ambiguous. The case proceeded to jury trial to determine the correct interpretation of the will. In representing the housekeeper and her daughter, I called the attorney who prepared the will to testify before the jury as to what the decedent had intended when she requested the preparation of the will and what he, as the preparer, had intended in drafting the will.

The jury concluded that the decedent intended to leave her residence to her housekeeper and the housekeeper's daughter. The decedent's sister did inherit, as per the will, the rest of the estate that did not consist of the decedent's residence.

e. Party represented.

Margarita Morales and Apolinar Morales.

f. Nature of participation.

Represented clients in all proceedings before the trial court, including jury trial, and all proceedings before the Court of Appeals and the Texas Supreme Court.

Case No. NINE (continued)

g. Final disposition.

Jury interpreted will in favor of my clients and the decision was affirmed by the Court of Appeals and Writ of Error denied by the Texas Supreme Court.

h. Date of rep.

January 1985 to November 1991.

i. Name of Court and Judge.

County Court at Law No. Five, El Paso County, Texas  
Hon. Herbert E. Cooper

j. Name, address, phone # of all other counsel.

Opposing counsel:

Joseph J. Rey, Jr.  
530 E. Overland  
El Paso, TX 79901  
(915) 532-5401

Case No. TEN

Significant litigated matter:

a. Style.

The State of Texas vs. Herbert Armendariz.

b. Docket No.

48094-243 and 50663-243

c. Citation and date.

N/A

d. Capsule summary.

The Defendant was accused of entering a habitation with intent to commit kidnapping and the abduction of a young lady. The Defendant had entered through the unlocked front door of a residence, entered the young girl's bedroom and was attempting to abduct her when her screams alerted the other residents at which time they intercepted the Defendant as he was carrying the girl and trying to cover her mouth with his hand. The Defendant insisted that he had been to a party and that about 4:00 a.m. he went for a walk because the house was hot. He said he was looking for the party when he went into a yard and someone called the police. The Defendant was on probation for a three-year sentence for burglary of a vehicle when he was arrested. The State moved to revoke his probation on the burglary charge.

Two juries ruled that the Defendant was incompetent to stand trial and each time he was committed to the state hospital. After being hospitalized for a total period of over two years, he was returned again to face another competency trial. The third jury declared the Defendant competent and he was ordered to stand trial on the charges. The doctors that had testified previously that the Defendant was incompetent, testified a third time, after examination, that he was then competent to stand trial.

e. Party represented.

Defendant, Herbert Armendariz.



Case No. TEN (continued)

f. Nature of participation.

I was appointed to represent the Defendant after his first competency trial. Represented him in all subsequent trials.

g. Final disposition.

While awaiting trial on the Indictment, the State moved to dismiss the revocation of probation because the three-year sentence had expired. The county jail, not knowing that he had charges pending because of his numerous commitments to the state hospital, mistakenly released the Defendant. To my knowledge, he has never been captured.

h. Date of rep.

July 1989 to March 1990.

i. Name of Court and Judge.

243rd Judicial District Court  
Hon. Herb Marsh, Jr.

j. Name, address, phone # of all other counsel.

For the State: Crista Bradley  
Asst. District Attorney  
500 E. San Antonio  
El Paso, TX 79901  
(915) 546-2059

19. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney/client privilege (unless the privilege has been waived).

I served as legal counsel for State Representative Paul C. Moreno during the 1981 and 1983 legislative sessions. My sole duty was to counsel Representative Moreno on redistricting issues. I worked with Representative Moreno's staff in formulating a plan to divide El Paso County into five legislative districts. I advised Representative Moreno on how to comply with all federal and state requirements on redistricting.

From 1982 until I was appointed judge of County Court at Law Number One on November 13, 1991, I served as attorney appointed to represent patients being considered for involuntary commitment for hospitalization because of mental illness. I served almost on a weekly basis representing the patients on probable cause hearings and on final trial. I would advise the patients on all their procedural and substantive rights and occasionally would represent the patients in jury trials. I was also appointed by Judge Herbert Cooper, County Court at Law Number Five (915) 546-2004 to serve as a special master to hold probable cause hearings when he was unavailable.

I served as pro bono attorney for LULAC-Project Amistad on guardianship matters. LULAC-Project Amistad is an agency that aids the elderly in housing, medical and other matters. Occasionally, a client of theirs would be incompetent to authorize or consent to, medical treatment. A guardianship would then be required before a medical facility could provide treatment. I advised the agency on what was required before the court would grant the guardianship application. I prepared all documents and appeared before the court as counsel for the prospective guardian.

## II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

I have no anticipation of any receipts from any previous business relationships whatsoever, nor from any former clients or customers. I have no expectation of income from any source except what is derived from my present position. I have therefore, made no arrangements to be compensated in the future for any financial or business interest. Because of my position as County Court at Law judge, I am a participant in the Texas County and District Retirement System. I have served less than three of the required eight years to be vested. Subsequent to my termination of service as a County Court at Law judge, I will withdraw whatever funds are on deposit in my account in a lump sum.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangement that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will strictly adhere to the Code of Judicial Conduct and all other codes and regulations which govern the conduct of the judiciary. If any potential conflict of interest matter arises in my court, my initial procedure is to fully divulge such to all parties and counsel. To avoid any appearance of impropriety, even if there is no actual conflict of interest, the case should be transferred to another court. The potential conflicts of interest that may arise in my situation are those involving my family, my former law partner, former clients and close friends, and former opposing parties. Since I have no financial arrangements with anyone, I do not anticipate this to be a problem.

In my present position as a trial judge, I have made it my practice not to preside over any case involving any litigant that is represented by my former law partner. I plan to continue this practice. I have also transferred cases from my court that involve former clients or close friends and plan to continue such practice. On one occasion, I transferred a legal malpractice case out of my court because it involved an attorney with whom my former partner and I had shared

office space with years before. I transferred the case to avoid any appearance of impropriety and plan to continue such practice for an appropriate period of time.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

I have absolutely no plans, nor am I in any way otherwise committed to pursue outside employment during my service with the court.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500.00 or more (If you prefer to do so, copies of the Financial Disclosure Report, required by the Ethics in Government Act of 1978, may be substituted here.)

See attached form AO-10.

5. Please complete the attached Financial Net Worth Statement in detail (Add schedules as called for.)

See attached Net Worth Statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

In 1972, I served as campaign treasurer for Paul C. Moreno. Mr. Moreno was running for the position of State Senator from El Paso County. In such position, I was responsible for collecting and depositing campaign funds. I also signed checks to pay for campaign expenses and made all necessary reports to the State of Texas.

From 1974 until November 1991, when I assumed my position as judge, I served as treasurer for a committee to elect and re-elect Paul C. Moreno to the Texas State House of Representatives. Representative Moreno was my law partner and still serves in the Texas State House of Representatives. In my position, I was responsible for collecting and depositing campaign funds. I also signed checks to pay for the campaign expenses and made all the necessary reports to the State of Texas. Representative Moreno was elected in 1974, assumed office in January of 1975 and ran for re-election every even-numbered year. I held the office of treasurer for every re-election campaign until November of 1991.

AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 6, §§101-112)

1. Person Reporting (Last name, first, middle initial) BRIONES, DAVID		2. Court or Organization		3. Date of Report 8/26/94	
4. Title (Article III Judges indicate active or senior status; Magistrate Judges indicate full- or part-time)		5. Report Type (check appropriate type) <input checked="" type="checkbox"/> Nomination, Date <u>8/25/94</u> ___ Initial ___ Annual ___ Final		6. Reporting Period 1/1/94 to 8/24/94	
7. Chambers or Office Address County Court at Law No. One Rm. 802, County Courthouse 500 E. San Antonio, El Paso, TX 79001		8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations ___ Reporting Officer Signature _____			

**IMPORTANT NOTES:** The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITION

NAME OF ORGANIZATION/ENTITY

☒

NONE (No reportable positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATE

PARTIES AND TERMS

☒

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATE

SOURCE AND TYPE

GROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

1 1/1/93 to 12/31/93	County of El Paso-at Law Number One	Salary, Judge of County Ct.	\$89,633.52
2 1/1/93 to 12/31/93	Fees for performing marriages		\$ 4,450.00
3 1/1/93 to 12/31/93	Entitlements from previous law practice		\$ 9,666.66
4 1/1/93 to 12/31/93	I.B.E.W. Local Union #583, 6967 Commerce El Paso, TX (S)		\$
5 1/1/93 to 12/31/93	El Paso Independent School District, 6531 Boeing Dr., El Paso, TX 79925 (S)		\$



AO-10  
Rev. 1/93

## FINANCIAL DISCLOSURE REPORT

Report Required by the Ethics  
Reform Act of 1989, Pub. L. No.  
101-194, November 30, 1989  
(5 U.S.C.A. App. 5, §§101-112)

1. Person Reporting (Last name, first, middle initial)  BRIONES, DAVID	2. Court or Organization	3. Date of Report  8/26/94
4. Title (Article III judges indicate active or senior status; Magistrate judges indicate full- or part-time)	5. Report Type (check appropriate type) <u>X</u> Nomination, Date <u>8/25/94</u> — Initial — Annual — Final	6. Reporting Period 1/1/93 to 8/24/94
7. Chambers or Office Address County Court at Law No. One Rm. 802, County Courthouse 500 E. San Antonio, El Paso, TX 79901	8. On the basis of the information contained in this Report, it is, in my opinion, in compliance with applicable laws and regulations _____ Reviewing Officer Signature _____	
IMPORTANT NOTES: The instructions accompanying this form must be followed. Complete all parts, checking the NONE box for each section where you have no reportable information. Sign on last page.		

## I. POSITIONS. (Reporting individual only; see pp. 7-8 of Instructions.)

POSITIONNAME OF ORGANIZATION/ENTITY☐

NONE (No reportable positions)

## II. AGREEMENTS. (Reporting individual only; see p. 8-9 of Instructions.)

DATEPARTIES AND TERMS☐

NONE (No reportable agreements)

## III. NON-INVESTMENT INCOME. (Reporting individual and spouse; see pp. 9-12 of Instructions.)

DATESOURCE AND TYPEGROSS INCOME

(Honoraria only)

(yours, not spouse's)

☐

NONE (No reportable non-investment income)

6	1/1/93 to 12/31/93	University of Texas at El Paso, El Paso, TX 79968 (S)	\$ _____
7	1/1/94 to 8/24/94	Salary, Judge of Couty Ct. County of El Paso-at Law Number One	\$ 60,340.00
8	1/1/94 to 8/24/94	Fees for performing marriages	\$ 5,090.00
9	1/1/94 to 8/24/94	Entitlements from previous law practice	\$ 7,000.00
10	1/1/94 to 8/24/94	El Paso Independent School District, 6531 Boeing Dr., El Paso, TX 79925 (S)	\$ _____

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

BRIONES, DAVID

Date of Report

8/26/94

## IV. REIMBURSEMENTS and GIFTS -- transportation, lodging, food, entertainment.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate reportable reimbursements and gifts received by spouse and dependent children, respectively. See pp.13-15 of Instructions.)

## SOURCE

## DESCRIPTION

☐

NONE (No such reportable reimbursements or gifts)

1

E X E M P T

2

3

4

5

6

7

8

## V. OTHER GIFTS.

(Includes those to spouse and dependent children; use the parentheticals "(S)" and "(DC)" to indicate other gifts received by spouse and dependent children, respectively. See pp.15-16 of Instructions.)

## SOURCE

## DESCRIPTION

## VALUE

☐

NONE (No such reportable gifts)

1

E X E M P T

2

\$

3

\$

4

\$

\$

## VI. LIABILITIES.

(Includes those of spouse and dependent children; indicate where applicable, person responsible for liability by using the parenthetical "(S)" for separate liability of spouse, "(J)" for joint liability of reporting individual and spouse, and "(DC)" for liability of a dependent child. See pp.16-18 of Instructions.)

## CREDITOR

## DESCRIPTION

## VALUE CODE\*

☒

NONE (No reportable liabilities)

1

2

3

4

5

6

7

\* VALUE CODES: J = \$15,000 or less E = \$15,001 to \$50,000 L = \$50,001 to \$100,000 M = \$100,001 to \$250,000  
 R = \$250,001 to \$500,000 O = \$500,001 to \$1,000,000 P = More than \$1,000,000

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

BRIONES, DAVID

Date of Report

8/26/94

## VII. INVESTMENTS and TRUSTS -- income, value, transactions. (Includes those of spouse and dependent children: see pp. 18-27 of Instructions.)

A. Description of Assets (including trust assets)  Indicate, where applicable, owner of the asset by using the parenthetical (1) for joint ownership of reporting individual and spouse, (S) for separate ownership by spouse, (DC) for ownership by dependent child.  Place "(X)" after each asset exempt from prior disclosure.	B. Income during reporting period		C. Gross Value at end of reporting period		D. Transactions during reporting period				
	(1)	(2)	(1)	(2)	(1) Type (e.g., buy, sell, transfer, etc.)	(2) Date: Month Day	(3) Value: Code: (J-P)	(4) Sale: Code: (A-H)	(5) Identity of buyer/seller (if private transaction)
	Am't Code: (A-S)	Type (e.g., div., rent or Int.)	Value: Code: (J-P)	Value: Method: Code: (Q-W)	If not exempt from disclosure				
<input type="checkbox"/> NONE (No reportable income, assets, or transactions)									
1 Savings Acct, Gov't Employees Cr. Union	A	Int	J	T					
2									
3									
4									
5									
6									
7									
8									
9									
10									
11									
12									
13									
14									
15									
16									
17									
18									
19									
20									

1 Income/Gain Codes:	A=\$1,000 or less (See Col. B1 & D4)	B=\$1,001 to \$2,500 F=\$50,001 to \$100,000	C=\$2,501 to 5,000 G=\$100,001 to \$1,000,000	D=\$5,001 to \$15,000 H=More than \$1,000,000
2 Value Codes:	J=\$15,000 or less (See Col. C1 & D3)	K=\$15,001 to \$50,000 O=\$500,001 to \$1,000,000	L=\$50,001 to \$100,000 P=More than \$1,000,000	M=\$100,001 to \$250,000
3 Value Method Codes:	Q=Appraisal (See Col. C2)	R=Cost (real estate only) V=Other	S=Assessment W=Estimated	T=Cash/Market

## FINANCIAL DISCLOSURE REPORT (cont'd)

Name of Person Reporting

BRIONES, DAVID

Date of Report

8/26/94

## VIII. ADDITIONAL INFORMATION or EXPLANATIONS. (Indicate part of Report.)

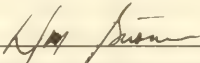
## IX. CERTIFICATION.

In compliance with the provisions of 28 U.S.C. § 455 and of Advisory Opinion No. 57 of the Advisory Committee on Judicial Activities, and to the best of my knowledge at the time after reasonable inquiry, I did not perform any adjudicatory function in any litigation during the period covered by this report in which I, my spouse, or my minor or dependent children had a financial interest, as defined in Canon 3C(3)(c), in the outcome of such litigation.

I certify that all information given above (including information pertaining to my spouse and minor or dependent children, if any) is accurate, true, and complete to the best of my knowledge and belief, and that any information not reported was withheld because it met applicable statutory provisions permitting non-disclosure.

I further certify that earned income from outside employment and honoraria and the acceptance of gifts which have been reported are in compliance with the provisions of 5 U.S.C.A. app. 7, § 501 et. seq., 5 U.S.C. § 7353 and Judicial Conference regulations.

Signature



Date

8/26/94

NOTE: ANY INDIVIDUAL WHO KNOWINGLY AND WILFULLY FALSIFIES OR FAILS TO FILE THIS REPORT MAY BE SUBJECT TO CIVIL AND CRIMINAL SANCTIONS (5 U.S.C.A. APP. 6, § 104, AND 18 U.S.C. § 1001.)

## FILING INSTRUCTIONS:

Mail signed original and 3 additional copies to:

Judicial Ethics Committee  
Administrative Office of the  
United States Courts  
Washington, DC 20544



DAVID BRIONES

JUDGE

SURY CARRERA

OFFICIAL COURT REPORTER

## County of El Paso

COUNTY COURT AT LAW NO. 1

802 COUNTY COURTHOUSE EL PASO, TEXAS 79901

TELEPHONE 915 / 546-2011

FAX 915 / 546-8188

ALICE ACOSTA  
COURT COORDINATORSAMMY RAY ESTORGA  
BAILIFF

September 8, 1994

Committee On Financial Disclosure  
Administrative Office Of The  
United States Courts  
Washington, D. C. 20544

RE: Amendment to Form AO-10  
of David Briones, dated  
8/26/94

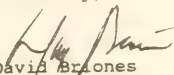
Dear Members Of The Committee:

Please consider this letter an amendment to Form AO-10 of the undersigned, dated 8/26/94. Part VII, Investments and Trusts, should include the following:

- (1.) 1 Savings Acct, Gov't Employees Credit Union (J)  
[(J) was left out in original report].
  - (2.) 2 Retirement Account, Texas County & District  
Retirement System (J);
- B.(1) = A; B.(2) = Int; C.(1) = K; C.(2) = W;  
D. = EXEMPT.

My signature herein **CERTIFIES** as to the accuracy and completeness of my Financial Disclosure Report as amended.

Sincerely,

  
David Briones  
Judge

DB:aa





## DAVID AND DELIA BRIONES

SCHEDULE OF PERSONAL PROPERTY

Property	Value
1. 1992 Ford Mustang automobile, encumbered by a note payable to Government Employees Credit Union. . .	\$ 12,000.00
2. 1986 Pontiac 6000 automobile, encumbered by a note payable to Government Employees Credit Union. . .	2,000.00
3. 1984 GMC Sierra Pickup truck, encumbered by a note payable to Government Emplouees Credit Union. . .	1,000.00
4. Furniture, appliances and all miscellaneous personal property. . . .	10,000.00
	<hr/>
Total Personal Property	\$ 25,000.00

## DAVID AND DELIA BRIONES

SCHEDULE OF SECURED NOTESNotes Payable to Banks

1. Note payable to Government Employees  
Credit Union secured by a mechanic's  
lien on the real property commonly  
known as 3301 Morehead, El Paso,  
Texas, present balance . . . . . \$ 8,144.33
  2. Note payable to Government Employees  
Credit Union secured by a lien on the  
1992 Ford Mustang automobile,  
present balance . . . . . \$ 11,930.87
  3. Note payable to Government Employees  
Credit Union secured by a lien on the  
1986 Pontiac 6000 automobile and the  
1984 GMC Sierra pickup truck,  
present balance . . . . . \$ 7,814.77
- Total Secured Notes                      \$ 27,889.97

Real Estate Mortgage Note

1. Note payable to Paula Brook, secured  
by a vendor's lien on the real property  
commonly known as 3301 Morehead, El Paso,  
Texas, present balance . . . . . \$ 8,900.00

## DAVID AND DELIA BRIONES

SCHEDULE OF DEBTS (UNSECURED)

<u>Creditor</u>	<u>Balance Due</u>
1. Sears . . . . .	\$ 75.00
2. Dillard's . . . . .	130.00
3. The Popular . . . . .	330.00
4. VISA . . . . .	3,300.00
5. Mervyn's . . . . .	175.00
6. J.C. Penney . . . . .	<u>178.00</u>

Total Unsecured Debts	\$ 4,188.00
-----------------------	-------------

## DAVID AND DELIA BRIONES

SCHEDULE OF REAL ESTATE

## Legal Description:

The south 80.9 feet of Lot 14, the  
 east 13.7 feet of Lot 15, the south  
 70 feet of Lot 16 and the west 11.3  
 feet of Lot 15, Block 33, GRANDVIEW  
 ADDITION to the City of El Paso,  
 El Paso County, Texas, commonly  
 known as 3301 Morehead, El Paso,  
 Texas, value . . . . . \$ 65,000.00

## Notes Secured by the Above Described Property:

1. Note payable to Paul Brook, secured  
 by a vendor's lien, present value. . . \$ 8,900.00
2. Note payable to Government Employees  
 Credit Union, secured by a mechanic's  
 lien, present value. . . . . \$ 8,144.00



## III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility call for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

The El Paso Bar Association requires mandatory pro bono service from all attorneys practicing in El Paso County. Each attorney represents a minimum of two pro bono clients per year in a domestic relations suit. The clients are screened by the El Paso Legal Assistance Society and if they need certain guidelines, they are then referred to an attorney who will represent them pro bono. While in private practice, I supported the policy and complied with or exceeded the requirements for pro bono service. As a member of the Board of Directors and as an officer of the Mexican-American Bar Association of El Paso in the early 1980s, I worked with representatives of the El Paso Bar Association in implementing the program and formulating the policies for mandatory pro bono. As a member of the Board of Directors of the El Paso Legal Assistance Society, I assisted in setting up the procedures and guidelines for the program.

As a member of the Board of Directors of the Mexican-American Bar Association of El Paso, I helped to organize the Legal Rights Fair, May 1984. The fair was organized to offer free legal advice on various areas of the law to low-income individuals.

I served two terms on the Board of Directors of the El Paso Legal Assistance Society. I first served in 1972 when I had been in practice for less than one year. I again served on the Board in 1984 and I was awarded a certificate of merit and appreciation from the Board in 1985 for devoting many hours to effectuate policies and procedures to make sure that legal services are provided to the disadvantaged.

I served as pro bono attorney for all LULAC-Project Amistad in 1990 and 1991. This is an agency set up to aid the elderly in housing, medical and other matters. A guardianship would occasionally be required when an individual, because of advanced illness or age, was incompetent to authorize medical treatment. I would prepare the necessary documents and appear in court as counsel for the guardian.

As a judge, every October, I participate in the educational program, Law School for Non-Lawyers. These are classes for non-lawyers set up by the University of Texas at El Paso in conjunction with the El Paso Young Lawyers Association. For a period of two weeks, different subjects are presented to the students. The lectures are free to the public and no compensation is paid to the speakers. Since assuming the bench, I have taught the class in Wills, Estates and Probate as part of the program.

2. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion. Do you currently belong, or have you belonged, to any organization which discriminates -- through either formal membership requirements or the practical implementation of membership policies? If so, list with dates of membership. What have you done to try to change these policies?

I do not now belong, nor have I ever belonged, to any organization that discriminates.

3. Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? Is so, did it recommend your nomination? Please describe your experience in the entire judicial selection process, from the beginning to the end (including the circumstances which led to your nomination and interviews in which you participated.)

Yes, there is a selection commission in this jurisdiction to recommend candidates for nomination to the federal courts. Yes, I was recommended by such a commission for nomination. I was first contacted by some of the members of the commission and encourage to submit my name to the commission for consideration. I, then, submitted a Personal Data Questionnaire to the commission.

The commission then selected several of the applicants for interview. The commission then met in San Antonio, Texas, and in a matter of several days interviewed all the selected applicants. I was one of four individuals recommended by the commission to fill four vacancies in the Western District of Texas. Senator Bob Krueger accepted all four recommendations. I was then provided with all the necessary forms from White House Counsel's Office. The forms and supporting documents were submitted and various conferences by telephone were conducted with Department of Justice staff.

In November 1993, I was interviewed in Washington, D. C. by Eleanor Dean Acheson, Assistant Attorney General, from the Office of Policy Department and members of her staff. In December of 1993 and January of 1994, I underwent various interviews with Special Agent Al Cruz of the El Paso Office of the Federal Bureau of Investigation. I was then contacted by Pike Powers, Jr., the Fifth Circuit representative of the American Bar Association's Standing Committee on the Federal Judiciary and in the following months, he conducted a number of interviews, both in person and by telephone.

4. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any specific case, legal issue or question in a manner that could reasonably be interpreted as asking how you would rule in such case, issue or question? If so, please explain fully.

No one involved in the selection process has discussed any case or issue with me whatsoever.

5. Please discuss your views on the following criticism involving "judicial activism."

The role of the federal judiciary within the federal government, and within society, generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

- a. A tendency by the judiciary toward problem-solution rather than grievance-resolution;
- b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far-reaching orders extending to broad classes of individuals;
- c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;
- d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and
- e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

In our complex society, disputes come before the courts in many different ways. Court decisions should be based on the facts of each respective case and should be limited to resolving the legal issues presented in each case, and involving only the litigants in each case. It is not the responsibility of the courts to impose broad affirmative duties upon government and society. Federal judges are not administrators and should not impose themselves upon other institutions. The duty of any judge is to interpret the law and enforce the provisions of the Constitution. It is up to Congress to determine policy by legislation and not up to the courts. It is not up to the courts to balance the budget or raise taxes. The law may not be always what judges want it to be, but change is for Congress to determine. The legal requirements of standing and ripeness are set forth by legal precedent and must be strictly followed by lower courts. Settled issues of law provide stability and predictability and to depart from precedent upsets arrangements made in reliance on settled law. It is up to Congress to enact the laws of the land.







3 9999 05982 991 9



